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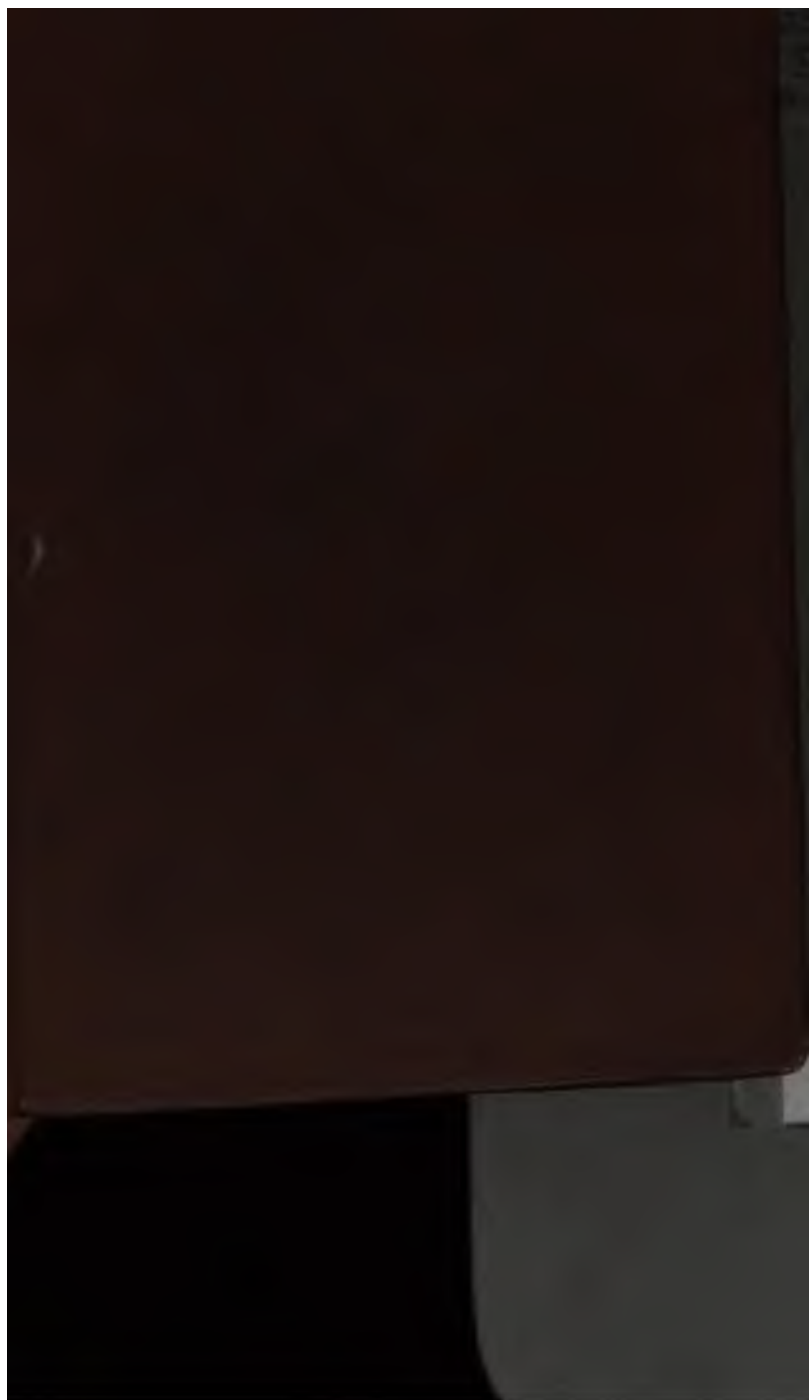
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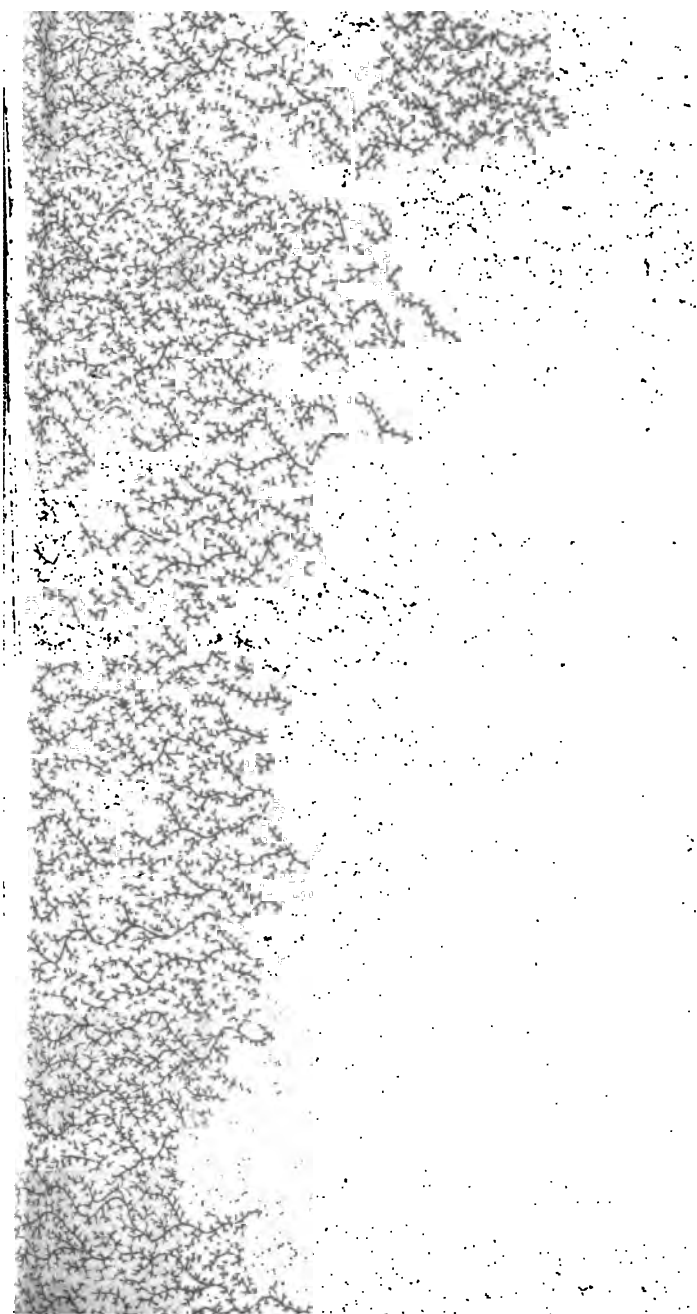
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Permit me on behalf
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Very truly thine
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Wm. B. Smith
London N. H.

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THE
PUNISHMENT OF DEATH.

A SELECTION OF ARTICLES

FROM

THE MORNING HERALD,

WITH NOTES.

— If these truths should happily force their way to the thrones of Princes, be it known to them, that they come attended with the secret wishes of all mankind.—Tell the King who deigns them a gracious reception, that his fame shall outlive the glory of conquerors, and that equitable posterity will exalt his peaceful trophies above those of a Titus, an Antoninus, or a Trajan.

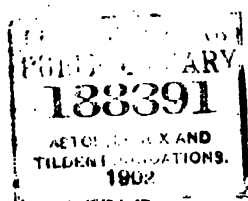
Marquis Beccaria 1767.

VOL. II.

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INTRODUCTORY REMARKS

TO THE

SECOND VOLUME.

FROM the favourable reception given to a former Volume, it might seem superfluous, at first sight, to prefix any thing of an introductory nature to the present one. As, however, the two are adapted, if necessary, for separate circulation—each being, on that account, rendered complete in itself by a separate index—it will be right to again advert to the circumstances under which the work originally appeared. These we subjoin:—

At a Committee of the Society for the Diffusion of Information on the subject of Capital Punishments, held on Monday, November 30, 1835, the following Resolution was unanimously adopted:—

RESOLVED—‘ That the Articles upon the Criminal Law which have
‘ appeared from time to time for several years past, in the
‘ columns of the *Morning Herald*, are of a character to espe-
‘ cially call for the grateful acknowledgment of this Committee,
‘ as having materially contributed to promote the recent Ame-
‘ lioration of the Penal Code:—and, that this Committee do
‘ forthwith cause a Selection of those Articles to be published in
‘ a permanent form, in testimony of their value, and in further-
‘ ance of the great object of rendering the Criminal Law more

‘*efficient*, by obtaining for it the support of reason, and of
‘enlightened PUBLIC OPINION.’

The above information is for the public at large—being unnecessary, as far as those numerous Correspondents of the Committee, in the three kingdoms, are concerned,—through whom these little volumes, intended as manuals, find their way to the tables of the reading-room or book societies, as well as to the libraries of influential characters, in various walks of life—and, through whose patriotic exertions, the pamphlets and other documents of the Association, (*post*, p. 280,) come under the notice of the Provincial Press, and obtain its invaluable co-operation.

In reference to the general progress of the views advocated in these Volumes, it may be remarked, that throughout the whole of continental Europe, and especially in those kingdoms, blessed—like England—with the sway of a paternal sceptre, the penalty of *death* has, at least in practice, ceased to be inflicted for almost every crime but actual murder. In our own country, too, we have lived to see the day, hailed by all, when a Sovereign reigns, who has not permitted the enforcement of that extreme sentence for a period of *nearly four years*,* in almost the only cases necessarily

* The last execution for “*London and Middlesex*” took place on Tuesday, April 23, 1833. (See *post*, p. 286.) Three years and ten months have therefore since elapsed. The prisoner’s name was *Coney*. He

reported to **THE KING** himself in Council—those of “*London and Middlesex*,” including a population of *one million and a third*.*

How have these great results been brought about, of which the north and south of Europe—Tuscany and Russia—gave the first examples? To the perusal of Beccaria, and other eminent writers of the last and present century, and to the personal virtues of the Grand Duke **LEOPOLD** and the Empress **ELIZABETH**, these effects are traced. Among those writers, numerous on the Continent, and but few with us, we now record another—anonymously at present—of whose labours a gifted Contemporary, and upon the subject of Criminal Law, a highly competent authority, speaks in terms as follow :—

‘—A noble monument of the general good which may be wrought, even in the humble columns of a newspaper, when perseverance, talent, and manly philanthropy seriously engage in the work.’—Describing the First Volume of these Selections, the reviewer adds, ‘This monument stands before us in a small volume upon “The Punishment of Death,”—a series of essays, upon, this morally and politically, most important subject—in possession of which we could well afford to lose all that has been written by Beccaria,

had been convicted of a burglary in Bartlett’s Buildings, Holborn. The Prosecutor—most anxious that his life should be spared—for that purpose had personal interviews, separately, with Earl **GREY**, then Premier; Lord Chancellor **BROUGHAM**; and Lord **MELBOURNE**, at that time Secretary of State for the Home Department.

* Population—1,358,541—*Census of 1831*.

‘Romilly, Montagu, and Bentham. It is no disparagement to the writers named, to say that the literary merit of the *Morning Herald’s* essays is not inferior to their best compositions, while our contemporary has had the advantage of abundant *practical* illustration, of which he has most judiciously availed himself.’*

Such a quotation as this must raise a reader’s expectations.—We are not apprehensive of their disappointment. Let him, for specimens, but turn to the sketch of Armand Carrel’s character (*post*, p. 352); to the article inserted at page 154; or, to the remarks upon the retirement of the Venerable and Learned Baron Bayley from the Bench (p. 189).—(It may not be unnecessary to state in this place, that the Editor of these Volumes, having never been connected with the establishment of the *Morning Herald*, feels himself quite free to speak in any terms he thinks proper, as to the merits of the articles, which have appeared in that Journal.)

But we hasten to a conclusion of these introductory observations. It will be right, however, first to advert to the Criminal Statistics we possess, of some European States, and to present brief abstracts of them. They will serve to demonstrate the fact that the disuse of capital punishments is not attended by the increase of murderous crimes—but the contrary:—they will confirm the statements of the Grand Duke of

* *Standard Newspaper*, April 7, 1836.

Tuscany, (*post*, p. 376,) and Sir James Mackintosh, (*post*, p. 100,) as to the results of discontinuing spectacles of blood. And first, as to Belgium—

BELGIUM.*	Total executed for various crimes.	Total convicted of <i>Murder</i> .
5 years ending with 1804	235	150—or <i>per anna</i> 30
5 years 1809	88	82 16
5 years 1814	71	64 13
5 years 1819	26	42 8½
5 years 1824	23	38 7½
5 years 1829	22	34 7
5 years 1834	<i>none</i> .	20 4

Here we see, that in Belgium, with a population of 3 ¼ millions, the diminution of capital punishments, and ultimately their discontinuance, so far from causing any increase of the crime of *murder*, has been attended with the very opposite result. †

* Extracted from the Official Tables, appended to the *Projet de loi*, printed for the Belgian Chamber of Representatives, *Séance du 1er Août*, 1834, No. 177.

† M. Ed. DUCPETIAUX, Inspector-General of the Prisons of Belgium, makes the following remarks upon the subject, in an excellent pamphlet printed for circulation, but not for sale.

‘ L’ inutilité de la peine de mort, ses inconvénients comme moyen de prévention, la répugnance générale et toujours croissante dont elle est devenue l’objet, la possibilité de la remplacer par des garanties plus efficaces, résultent à l’évidence de ces diverses propositions. Pour les combattre et les réfuter, il ne suffirait pas de les nier ; il faudrait encore opposer des faits à des faits, des chiffres à des chiffres, et prouver que les lois de sang trouvent encore leur justification dans leur nécessité.’—*Statistique de la peine de mort, en Belgique, en France, en Angleterre et en Prusse*.

Next, as to that great empire, where was instituted the *CODE NAPOLEON*—that imperishable memorial of its founder's wisdom—what do we find upon examining the authentic Records of Criminal Proceedings, the "*Compte général de l'administration de la justice criminelle en France*"—?

FRANCE.	Total executions for murder.	Total accusations of <i>Murder.</i>
5 years ending with 1829	352 *	1182—or <i>per ann.</i> 236
5 years1834	131 *	1172 234

Thus France, also, with a population of 32 *millions*, affords an example of capital punishments considerably decreased, and the crime of *murder* not augmented.

PRUSSIA.†	Total executed [all for homici- dal crimes].	Total convicted of <i>Murder.</i>
5 years ending with 1824	54	69—or <i>per ann.</i> 14
5 years1829	33	50..... 10
5 years1834	19	43..... 8½

Prussia has a population of 13 *millions*. The facts presented by this table are admirably illustrative of the practical benefit resulting from—the all but total—abolition of the extreme penalty. The diminution of the worst of crimes, accompanying the mitigated

* [The *entire* numbers executed (for various crimes) in the two periods, respectively, were 432 and 153. If these numbers be adopted in the text, it makes the contrast rather stronger.—ED.]

† Abridged from the Criminal Records of Prussia, an extract of which was, we are informed, with great kindness and liberality furnished to T. B. WRIGHTSON, Esq., when at Berlin, by M. de KAMPZ, *Ministre de la Justice*.

application of the capital law, is most remarkable: had we disturbed the uniformity of the periods by giving, separately, the three last years, they would have shewn only 2 executions * *per annum*, in all Prussia, and the average number of *murders* reduced to $7\frac{1}{2}$.

ENGLAND [AND WALES.] †	Total executed for various crimes.	Total convicted of <i>Murder</i> .
7 years ending with..1820	649	141—or <i>per ann.</i> 20
7 years1827	494	113 16
7 years1834	355	105 15

Here we have *septennial* Returns for England and Wales, furnishing similar practical evidence in support of the principle, that capital punishment is unnecessary for the repression of even the most dangerous species of crime. The population is $13\frac{3}{4}$ millions.

The foregoing are taken from the *official* statements of four different nations: and if to them be added Austria, (whose laws are extremely mild, although the Criminal Tables are not yet received by us,) we have an extent of territory comprising not fewer than 95 millions of people—and constituting not the least enlightened portion of Europe—in which, penalties

* See *post*, p. 379.

† Extracted from *Parl. Paper*, No. 217, printed in 1835, being the latest in which we can find the *septennial* columns inserted.—This table comes down to the same period as the tables we have given for Belgium, France, and Prussia.

of blood have either ceased, or been nearly abrogated—*with the exception of England.*

What has been the result? Has the departure from that system of terror and extermination which produced such a frightful waste of life upon the scaffold, endangered public morals, or rendered society less secure? On the contrary, do not these Returns shew, by the irresistible force of arithmetical demonstration, that morals are improved as the law is ameliorated—and society *better protected* by a just moderation, than by a destroying vengeance? We have excepted England, where although the law has of late undergone mitigation to some extent, yet more remains to be done for the improvement of criminal jurisprudence than in any civilized country of the world.

From this general result let us turn to some details—let us briefly examine what have been the effects of repealing, in a few cases, the capital provisions of our own penal law, about four years since. To judge how this mitigation has worked, we must distribute all the criminal commitments, whether small or great, into classes; because, if the class of *minor* ones should have increased, as (*cæt. par.*) may be supposed from increase of population, then a *similar increase* should be expected to exist in the *higher grades* of crime—whether of the class still visited with death, or of the other class in which that penalty has been remitted. We will there-

fore classify the whole in this way :—let us see what the results will be :—

*Abstract of the Criminal Commitments for ENGLAND
[& WALES,] divided into three classes.*

NON-CAPITAL Offences, such as larcenies, &c.

		Commitments.
1st Class.	3 years, ending with 1829	46,833
	3 years.....1832	51,623
	3 years.....1835	51,701

—Here the commitments *rise* from 46,833 to 51,701—indicating an increase of crime in that proportion.

OFFENCES for which the Punishment of Death CONTINUES to be inflicted, viz. arson, murder, attempted murder, robbery, &c.

		Executions.	Commitments.
2nd Class	3 years, ending with 1829	108	1,705
	3 years.....1832	120	2,236
	3 years.....1835	102	2,247

—Here also the commitments *rise*—they rise from 1,705 to 2,247—unrepressed by numerous executions.

OFFENCES for which the Punishment of Death was ABOLISHED in 1832–33; viz. coining, forgery, horse-stealing, sheep-stealing, larcenies above £5 in dwellings, and housebreaking: (to which, burglary though nominally capital, must be added, because formerly it was often indicted as housebreaking, while the two crimes continued subject to the same punishment.)

		Executions.	Commitments.
3rd Class	3 years, ending with 1829	96	4,622
	3 years.....1832	23	4,724
	3 years.....1835	2	4,292

—In this case only the commitments *fall*—namely, from 4,622 to 4,292—indicating, of course, a considerable *diminution* in these offences *no longer capital*.

The diminution of crime being thus shewn to apply to the *class which has ceased* to be punished with death, and not extending to *either of the other classes*, it cannot be attributed to any *change of circumstances in the country*. It can only be referred to *that change in the law* which has not only rendered prosecution more probable, but conviction less uncertain, if brought before a Jury. Upon this latter head, also, we have the conclusive evidence of Returns to Parliament. Thus—

Upon an average of the last three years, as to the offences in CLASS 2, for which capital punishment continues, for every 100 commitments, there have been in the aggregate only 42 convictions:—While in the same period, as to the 3rd CLASS, or those offences enumerated as having ceased to be visited with death, for every 100 commitments, there have been, on the average 74 convictions.

Such consequences, long ago predicted by the writer in the *Morning Herald*, cannot fail to be highly satisfactory. They prove the inutility, beyond dispute, of laws of blood. They do more—they prove their injurious tendency.

Let us once more cite our parliamentary documents, to shew the practical effects of abolishing the penalty of death in regard to one offence,* for which more vic-

* In 14 years, ending with 1818, no less than 204 *executions* took place in England & Wales for *forgery*, whilst those for *murder* were 202. In one year, 1809, there were 13 persons convicted, in the county of Lancaster alone, of forgery or uttering forged Bank of England Notes;—*every one* was put to death!—*Parl. Paper* 1819, No. 585.

tims have perished on the scaffold than for almost any other crime:—we allude to that of forgery. It was feared, by some, that the result of a repeal of the capital law of forgery, would be the ruin of commercial credit. Experience has proved how groundless was that apprehension. Commercial credit is safer than ever from the fraud of the forger, although “the altars of the discount-Moloch no longer smoke with blood.”*

FORGERY, *exclusively of Bank of England Notes.*†

<i>Two Periods.</i>	<i>Executed.</i>	<i>Prosecuted.</i>
5 years ending with..1830	5	85—or <i>per ann.</i> 17
5 years1835‡	<i>none.</i>	34 7

In conclusion, we will only add, that whether the present work be continued to another volume—depends at this moment upon the course which the Government of the country may choose to take, in regard to that full and efficient reform of the Criminal Law which society imperatively demands. Should

* *Times Newspaper.*—We quote from memory, and cannot at this moment give the date.

† The Returns of *Bank of England* forgeries furnish better materials for comparison than the Returns of *other* forgeries, because, in the latter case, the injured parties used generally to refrain from prosecuting, so long as the penalty continued to be *death*. Of course the above table is composed from Parliamentary Papers.

‡ By Parliamentary Returns it appears that the Bank prosecutions, in the year 1834, were only *two*; and in 1835, only *one*.—See *Parl. Paper*, No. 218, and the published Criminal Tables of the Home Office.

Government bring in *such a measure*, and obtain for it the sanction of the legislature, then our labours are at an end.——But— should they, after six long years of promises and procrastination, submit to Parliament a measure of *imperfect and superficial reform*, repealing only the statutes which are *already repealed in practice*,—then we are confident that the same exertions which have hitherto been so triumphantly employed in this cause, will not fail to be brought to bear upon the mock reform of the Government ; and, in that event, we shall consider it our duty, as before, to give to the arguments that may be urged, a more permanent form than they can receive in the columns of a daily newspaper, by the publication of a Third Volume of Selections.—Our sole desire is, that that benefit to society which *must* come at last, should come *speedily*—that the victory to be gained, should be won without delay,—for, as to the ultimate triumph of those principles, which now have found their way to every principal library in Europe, and which spread their humanizing influence wherever knowledge can diffuse its light, we entertain not the shadow of a doubt.

LONDON, Feb^y. 24, 1837.

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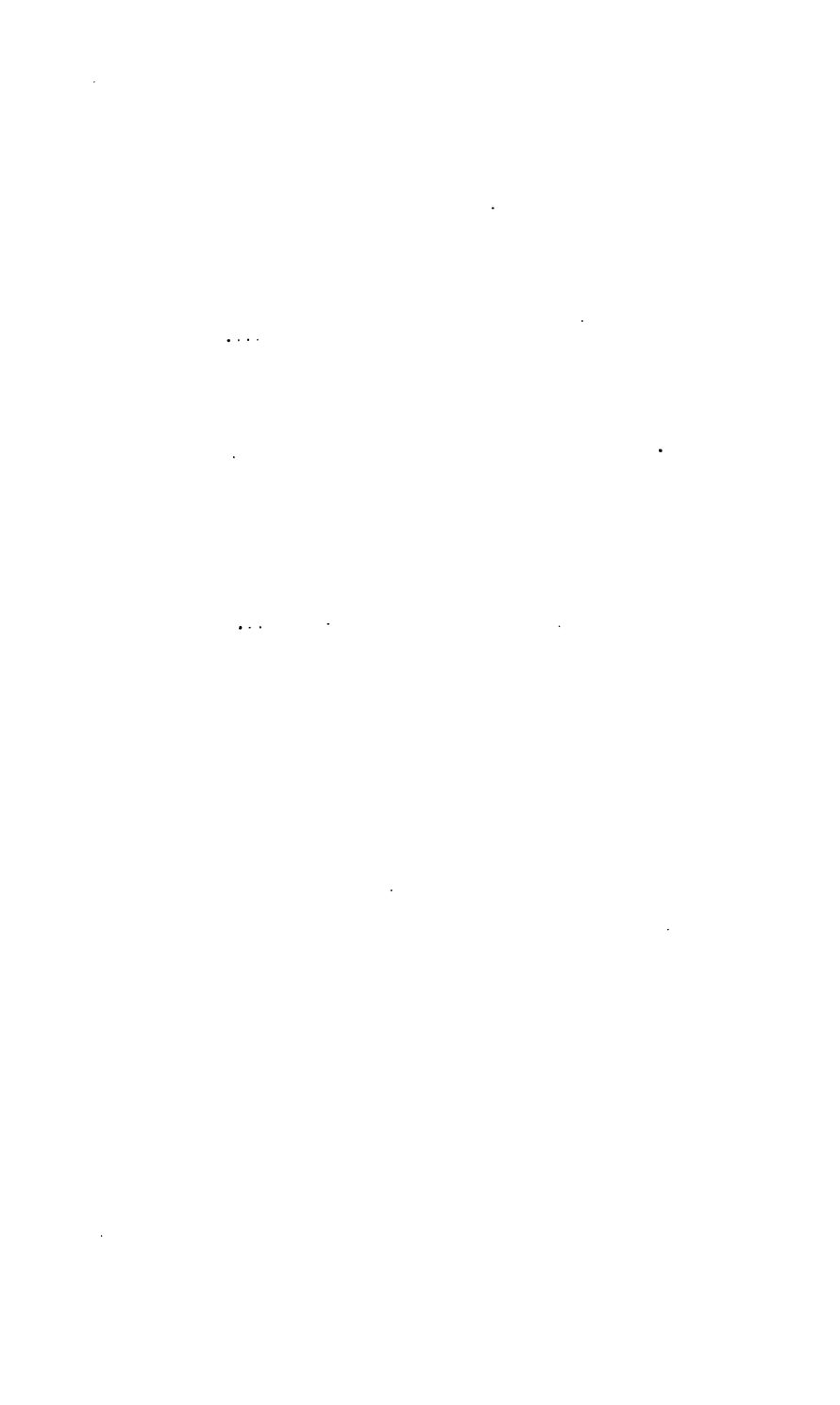
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The INDEX, at the end of this Volume also, will be
so arranged as to facilitate any reference to the subject
et, either of the Articles taken from the *Morning*
Ad, or of the various Notes subjoined to them. The
names of *persons* are, likewise, inserted.



CORRIGENDA.

- Page 18, lines 9, 13, 17, for PERIER, read PERRIER**
— 96, line 29, for 1830, read 1831
— 110, — 27, cancel *, and transfer Note * to the
preceding page.
— 163, in the Note, for p. 153 read p. 154
— 334, line 36, for Admiralty, read Treasury
— 355, — 2, for BERANGER, read BERENGER



THE
PUNISHMENT OF DEATH.

A SELECTION OF ARTICLES

FROM

THE MORNING HERALD,

WITH NOTES.

Five Burglars, at one time, sentenced to death, at Reading.

THE sentencing of *five* burglars to death, at one town on the Oxford Circuit, seems like an attempt to return to the old exterminating practice of the law, of which many years of melancholy experience had demonstrated the futility.

At one time it was the practice to execute all, or nearly all, the burglars that were convicted, and common house-breakers also. Public feeling was shocked, without any beneficial result being produced in the repression of crime. On the contrary, crime went on increasing; and the revengeful spirit, that usurped the name of Justice, only multiplied its examples of blood, to brutalize the minds of the ignorant, and offend the feelings of the enlightened and humane.

By degrees the moral power of opinion made encroachments on the barbarous practice of the law:—the executions for this offence were reduced, in progress of time, from *all*, or nearly all, *convicted*, to one-half—one-third—one-fourth—one-fifth—one-eighth—one-tenth—one-twentieth—and so on—until, in the year 1830—the last year of the

Tory Administration—we find the proportion of executions for burglary, compared with the convictions, was only about the one-fiftieth—there having been in that year 104 convicted, and only *two* executed.

In the year 1831, the first year of the Whig Administration—of those Whigs who had, for twenty years before, been the professed opponents of sanguinary laws—there were 99 convicted, and *four* executed; so that, in the first year of the Whig Government, the proportion of executions for this offence was doubled.

For the crime of housebreaking, in the year 1831, there were 517 convictions, and but one execution, making five executions in all, out of 616 convictions for the two crimes of burglary and housebreaking; or, one to about 123 convictions.—[See *Article of April 16, 1833, et seq.*]

Now Baron GURNEY sentences *five* men to death for burglary alone at the assizes of a single town, being a number equal to the *total executed* in England and Wales, during the *whole of the year* 1831, for the two offences before mentioned! The effect of this example of judicial slaughter, if it take place, will be to make convictions more difficult to be obtained, and thereby render the very violence of the law conducive to the protection and impunity of guilt.*

* Three of the above-mentioned convicts underwent the extreme sentence which the Judge had passed upon them. Their names were *Lincoln, Green, and Morris*. It was in vain a representation was made, in the proper quarter, that *they had spared the life* of the witness, a defenceless woman—that, so far from shedding blood, they were not guilty of even the slightest injury, either to her, or the other females of the house, a solitary one. Nay, more—upon the trial, this witness shewed that the burglars, while in the act of committing the offence, for which the law afterwards shed *their* blood, had said to her, ‘*We don’t want to shed blood;—we only want money.*’ This money, &c., they then took, directed the maid-servant to prepare them a supper, and afterwards left the house:—all this was given in evidence upon the trial; yet it obtained them no mercy. As to the law which takes a convicted burglar’s life, its tendency is to drive burglars to the

If we look for a certain number of years at the comparative number of *executions* and *acquittals* for the crimes of housebreaking and burglary, we shall find that, as the

desperate alternative of silencing witnesses; it is encouraging them to commit murder. Sir Thomas MORE emphatically says—‘*terrifying thieves too much, provokes them to cruelty.*’

Just at the time we write, the Criminal Returns for 1835 are laid before parliament. Let us, therefore, take the three years, 1833, 1834, & 1835, and comparing them with 1830, 1831, & 1832, ascertain whether the diminished number of executions has been productive of any effect upon the frequency of the crime, by the substitution of a milder punishment—a punishment from which there are *fewer chances of escape*, because that people are less reluctant to prosecute, and Juries to convict. In doing this, we must embrace housebreaking (the offence by daylight,) as well as burglary; for, while both were subject to *the same* punishment, the indictment for housebreaking was often preferred, while the real crime had been burglary: and, as house-breaking is now no longer a *capital* felony, the following comparison will serve to illustrate the working of the new law under that head also.

BURGLARY, AND HOUSEBREAKING.

ENGLAND AND WALES.	<i>Executed.</i>	<i>Committed.</i>
First period, three years, 1830, 1831, & 1832....	18	2632
Second period, three years, 1833, 1834, & 1835..	2	2226
<i>Decrease of Commitments....</i>		406-!

Here we have statistical proof of the groundlessness of those alarms sounded by a Noble and Learned Lord, who, while the Bill of 1833 was in progress, to repeal the capital enactment for housebreaking with larceny, exclaimed, ‘We shall be all murdered in our beds!’ What a salutary correction of the evil forebodings of that Noble and Learned Lord! Were the punishment of death removed to-morrow from the Statute-book, as it regards the other offence, burglary, we doubt not that the beneficial result shewn by these parliamentary tables, would be still further extended, and *greater PERSONAL protection* afforded, by removing the *stimulus* to commit murder, for which the penalty is no higher.—ED.

executions *diminished*, the *facility of conviction* was generally *increased*; and, on the contrary, when the executions were *increased*, the *facility of conviction* was *diminished* * * *

Here we have manifest proof that, besides the criminality of shedding human blood, it is a serious obstruction to the course of effective justice.—*Morning Herald, Wednesday, July 25, 1832.*

REVIVAL of the law for Hanging in Chains.

The old practice of *gibbeting* and *hanging in chains* for murder has been revived.* It is in the “age of intellect,” and by a “liberal and enlightened” Government, this prac-

* ‘ HANGING IN CHAINS.

‘ The proceedings of the legislature during the last few weeks afford a strange and a striking example of the perverse inclinations of our lawgivers. The Public are doubtless aware that two Bills—the Punishment of Death Abolition Bill, and the Anatomy Bill—have received the favourable attention of the two Houses of Parliament; but they are not perhaps equally well acquainted with the fact, that whilst the former is directed to the laudable object of effecting a substantial reform in our criminal code, by divesting it, in one instance at least, of its ancient ferocity, a clause in the Anatomy Bill restores an old practice, perfectly useless as a punishment, and worthy only of the most sanguinary periods of our history. By the clause to which we allude, that part of the law which makes dissection of the bodies of murderers a part of their peculiar punishment, is abolished; and a provision is substituted, by which “the bodies of all prisoners convicted of murder, shall either be hung in chains, or buried under the gallows on which they have been executed, or within the precincts of the prison in which such prisoner has been confined, according to the discretion of the Court before whom the prisoner may be tried.” This, every body will agree, is by no means what we might have expected in an age which boasts of the progress of the “school-master,” the “march of intellect,” &c.:—we had hoped, however, that the “discretion of the Court” would have been exercised in rejecting the first, and adopting the latter of the two courses pointed out by the Act.—But, no!—scarcely a fortnight has elapsed since the

tice, worthy of an era of profound barbarity, has been restored. A clause introduced into Mr. WARBURTON'S Anatomy Bill, [2 & 3 Will. IV, cap. 75,]—a Bill professedly undertaken to promote the interests of “science”—is the legal authority for the revival of the exploded barbarism. If we mistake not, this clause was either suggested by Lord GREY, or had his cordial support. It was, at all events, a Whig specimen of legislation, for the improvement of the criminal law.

Could ROMILLY, when he received the support of the Whigs, in endeavouring to get rid of the disgusting barbarities connected with the punishment of *high treason*—such as quartering the body, and fixing ghastly and blood-smeared heads on poles, and hanging up mangled limbs on City gates and in the public ways—could ROMILLY, we say, have believed any person who ventured to predict to him, that, twenty years after his death, those very Whigs would inflict upon the growing civilization of the age the renewal of the silly and savage practice, of hanging up malefactors to rot in chains in our streets and public roads, disfiguring the fair prospect of a country, and offending the general eye with spectacles of horror, and images of abomination? No! He would have treated the prediction as a vile calumny! If he had imagined his political friends and coadjutors, Lords GREY, and

‘measure received the Royal Assent, and already we have two
 ‘victims marked out for the gibbet. In old times, a tower on London
 ‘Bridge was converted into shambles of human flesh; and a map of
 ‘the City, of the date of 1598, represents a horrible cluster of heads
 ‘and quarters of unfortunate partisans in the civil war of that bar-
 ‘barous age. At a later period, the heads of traitors were stuck upon
 ‘poles at Temple-Bar; and down to the close of the last century
 ‘the country was studded with the gibbets of murderers and highway-
 ‘men. GEORGE THE THIRD, on his way to Windsor, was shocked
 ‘with one of these spectacles on Hounslow Heath; and his expressions
 ‘of disgust and horror put a stop to such exhibitions. Is it not
 ‘lamentable that the year 1832, the era of reform, should be chosen as
 ‘a fit period for the revival of this revolting practice!’—*Morning Herald*, August 11, 1832.

HOLLAND, and LANSDOWNE, and BROUGHAM, in possession of power, far different would be the uses to which, in his opinion, they would apply it, in "improving" the criminal law, to that of recalling into malignant life its departed barbarities—first, by an abortive attempt to make spring-gun assassination the law of the land ; and then, by a more successful effort, to pursue the crime of the murderer even beyond death, and wreak the vengeance of the law on his lifeless body.

The clause in question gives the alternative of hanging the body in chains, or burying it within the precincts of the prison. If the law must have "vengeance"—if it must go beyond the bounds of temperate justice, we have no objection to the latter mode of disposing of the body of the murderer. It does not, at all events, obtrude an offensive and revolting object on the public gaze, nor brutalize the feelings of the people by familiarity with horrible spectacles ; yet we see that some Judges, having the power of ordering the body to be disposed of, either in one way or the other, prefer the mode which is the more barbarous, as has been instanced in the cases of *Jobling*, convicted of the murder of Mr. Fairless ; and *Cook*, the murderer of Mr. Paas. The former murder was a savage proceeding, but there is a question whether it was premeditated—the latter was truly diabolical ;—yet why is it, that, because it is necessary to punish the crimes of a ruffian or a monster, Justice should disgrace herself by acts which public decency repudiates, and civilization disowns ?

The gibbet, with its appendant human scarecrow, was once not an infrequent object of English scenery, as the banks of the Thames bear witness even to our own time, where foreigners, entering the beautiful and majestic river, whose shores should not have been desecrated by any such defilements, have been shocked at the symbolic horrors of our "raw-head and bloody-bones" legislation ;—yet these exhibitions did not prevent, or even diminish, the

crime of murder. On the contrary, it went on increasing; for, this sort of exhibition, as all experience proves, never reforms, but always brutalizes—just as the breaking on the wheel, and exposing the body afterwards, under the old *regime* of France, only tended, by hardening the feelings of the spectators, to multiply the cases of murder committed under the most atrocious circumstances.

Besides, the exposing the body of the convict, as well as creating a *public nuisance*, exposes the law to insult, and adds a *new crime* to our overloaded penal code, by making it an *indictable* offence to *steal the body* from the gibbet, as the friends and relations often did in former times, and will do again.* To support one barbarity, the law must have recourse to another; and, to preserve a public nuisance, wage war against the natural affections of the human heart.—*Morning Herald*, Tuesday, August 14, 1832.

Practical application of the revived law for Hanging in Chains.

The revolting ceremonial of gibbeting the murderer *Cook* has been described with disgusting accuracy;—but scarcely was the body, after being subjected to the barbarous process of judicial vengeance, suspended upon the gibbet, than, it appears, an order was received for its removal, it being at length resolved by Government to remit that part of the sentence which condemned the remains of the malefactor to be hung in chains.

Against such a spectacle being presented to the eyes of the people in the nineteenth century, to disgust the more enlightened, and brutalize the ignorant, we protested some days ago, and expressed our surprise that Earl GREY and his Whig coadjutors in the Government should have sanctioned the revival of a practice, always disgraceful to the laws as well to the manners of a civilized country, and which had, in fact, fallen into disuse, from its own barbarity. We

* See extract from *Morning Herald* of September 10, at page 10.

thought the revival of this practice an unequivocal proof that, if the "schoolmaster be abroad," our liberal Government, with all its professed zeal for the education of the people, requires itself a few lessons of him. To teach examples of vengeance to the people in the name of Justice—to sanction the indecent treatment of the dead, although their memory be stained with crime—to cover the beauty of the land with abominable nuisances, shocking to the sight and the feelings of women and children, odious to the masculine sense of all enlightened minds, and only brutalizing to the vicious and the profligate—is no evidence of wisdom in Government—no proof of a judicious and discerning zeal for the moral training and mental cultivation of the people.

We feel confident that, in another parliament, this truly disgraceful clause in the Anatomy Bill, which authorizes hanging in chains, will be repealed.* It is not possible in the present age, that laws which outrage reason and decency can be executed;—and we would have the laws reasonable, temperate, and decent, that they may not be despised or insulted. In the meantime, if Government feel it, on reflection, improper to gibbet *Cook*, how can they gibbet any other murderer? It would be difficult to conceive a case of the sort worse than his. But the law, in punishing the greatest crimes, should not degrade itself from the service of Justice to the unhallowed drudgery of disgusting Revenge.—*Morning Herald, Friday, August 17, 1832.*

Failure of the experiment of Hanging in Chains, as to the body of Cook.—Second experiment, as to the body of Jobling.

Not many days have elapsed since we gave the Government credit for having ordered the removal of the body of *Cook*, the murderer, from the gibbet, at Leicester.

There may be—indeed we know there are—some legis-

* The anticipations of the writer in the *Herald* were realized in less than two years, by the enactment of the 4 & 5 Will. IV, cap 26,

lators who consider every demonstration of disgust at the display of gibbets and executions, as the result of a morbid sensibility, or, what is still worse, of an affected and spurious humanity. By such legislators it will be considered a great loss, in the way of example, that the flesh of *Cook* has not been permitted to rot, and his bones to whiten in the sun, for the benefit of the present and of future generations. With such reasoners the shock is every thing in morals; it is that which braces the nerve, and invigorates the health of the body politic. So, never mind how the feelings of society may be outraged!—provided you can only outrage and shock them enough, all is right in the way of criminal legislation!

The Ministers, however, did not adopt this principle in the disposal of *Cook's* remains; and, as we have already observed, not many days have elapsed since we gave them credit for their decision against the enforcement of the existing law in this instance. It was, therefore, with some surprise that we read the following paragraph in the *Sunderland Herald*, which refers to *another* case of gibbeting:—

‘The body of the unfortunate *Jobling* hangs in a very conspicuous place in Jarrow Slake. Great crowds continue to visit the spot; and, at high water, several boats daily approach the post on which the body is suspended. The sight from the road is most appalling. A collection is making at the turnpike-gate for the widow and children of the unfortunate man; but it is much to be desired that the contributions for this object were placed in the hands of some respectable person, who would see to their being properly applied.’

Surely, if it be only for the sake of their own consistency, Ministers will not hesitate to remove this nuisance also.

which abolishes the practice of hanging in chains. To Mr. EWART'S persevering efforts in criminal law reform, the country is indebted for the bringing in, and carrying through, the Bill for this purpose.—Connected with the subject are some circumstances which, after the disclosure given at the end of our first volume, (p. 317,) may not, perhaps, quite astonish the reader. We refer him to the article (*post*) dated August 27, 1833, and the notes. He will be repaid the trouble of turning to it.—ED.

That, which would have been wrong and barbarous in Leicester, cannot be right in civilized Northumberland, or at Jarrow Slake. But, observe the effect—the moral effect of this spectacle. We are told in the paragraph, what we can well believe, that the sight is most appalling. ‘So much the better,’ cry the advocates for horrific examples; ‘that is just what we want.’—But then look a little further, and see how the example works on the community. It is sufficiently attractive, we allow; for the paragraph tells us it is daily visited by crowds. But still, we say, look to its effect.—The same paragraph tells us that a subscription is making for the wife and children of the unfortunate man. Do we disapprove of this manifestation of pity for the survivors? No; but we allude to it, to shew how differently such spectacles operate upon the minds and hearts of the people, from the mode in which the legislature expects them to act. Here is commiseration, instead of the unmixed horror from which the supporters of such laws promise themselves such a harvest of virtue.

Hoping to find that the continuance of the exhibition to which we have been alluding is accidental, and will be removed when the attention of Government has been called to it, we shall say no more on the subject at present. Should it still continue to hold forth its barbarous attraction, we shall feel it our duty to return to it again.—*Morning Herald, Monday, Tuesday, August 21, 1832.*

*Failure of the second and final experiment, in England, of
Hanging in Chains.*

It is stated that the body of *Jobling*, convicted of the murder of Mr. Fairless, and hung in chains upon the gibbet, at Jarrow Slake, *has been stolen by his friends*, and is supposed to have been sunk in the river, or buried in the sand. This does not surprise us. The revival of the odious practice of gibbeting, which had been banished by the progress of civilized habits, added to the practical knowledge

of the utter uselessness of that disgusting operation, as a preventive of crime, was a great disgrace to the legislature of England in the nineteenth century. We trust that the signal failure of the experiment in the *two* instances in which it has been tried, will put an end to the nuisance for ever.

A misconception has gone abroad, that this unexpected revival by the legislature of an abominable nuisance, arose from an inadvertent acquiescence in the provisions of Mr. WARBURTON'S Anatomy Bill; but, objecting to much of that Bill as we do, we think it right that its author should not be held responsible for the objectionable alterations made in it by others. Mr. EWART'S Bill was greatly damaged by the absurd specimens of the legislative genius of Lord WYNFORD, which have been tacked on to it;—so was the Attorney-General's Bill, for abolishing the penalty of death in all cases of Forgery, seriously injured by two sanguinary exceptions made to its sound and rational principle by the same Lord WYNFORD, and the Marquis of LANS-DOWNE, who, on that occasion, was as anxious to snatch from extinction a relic of the exterminating system, and transmit it "unimpaired to posterity," as any anti-reform Lord in the land;—so the introduction of the clause, reviving the use of the gibbet for the bodies of persons convicted of murder, was the work of the House of Lords. Lord WYNFORD indeed, helped to bring it about, by objecting to the clause abolishing the dissection of murderers;—he added, that he had known instances where the fear of dissection had struck greater terror than death itself. Lord GREY was weak enough to be induced, on this representation, to try to substitute some other terror for that which the law had lost; though he ought to have well known that the fear of dissection had, in reality, no effect in preventing the crime of murder, as our criminal calendar for many years past could too well testify. His Lordship first proposed the introduction of a clause providing that the bodies of murderers should be buried beneath the gallows where executed,

or within the precincts of the prison where previously confined. To these there could be no great objection, except that the former would not often be practicable—in cities, for instance; and the latter practice might perhaps tend to render prisons still more unhealthy than they at present are; but the Noble Earl subsequently altered the amendment to one making persons convicted of murder, liable, at the discretion of the Judge, to be ordered to be *hung in chains*, or to be buried within the precincts of the prison.

It is worth observing that, in the two first instances of conviction for murder which followed the passing of the Act, the Judge preferred putting in practice the more barbarous mode of the two, and ordered *Cook* to be hung in chains at Leicester, and *Jobling* at Jarrow Slake. In allusion to those sentences, we then said—"This sort of exhibition, as all experience proves, never reforms, but always brutalizes—just as the breaking on the wheel, under the old *regime* of France, and exposing the body afterwards, only tended, by hardening the feelings of the spectators, to multiply the cases of murder committed under the most atrocious circumstances."—Well, the brutalizing effect of this proceeding was soon witnessed, upon *Cook's* body being suspended, to rot before the public gaze. The populace flocked thither from all quarters—not to take a moral lesson, but to satisfy a depraved curiosity in the first instance, and then to revel in intoxication and riot. A sort of fair was actually held in the vicinity of the disgusting spectacle; and, even at the foot of the gibbet, on the Sunday evening, were a knot of fellows collected, playing cards!—So much for the *terror* it inspired!*

* In confirmation of the foregoing remarks, we insert the following account of an execution in France:—

— *Extract of a Letter received from Paris, dated March 9, 1832.*

“The execution took place [at St. Pol] on Monday last, as I have already remarked. Throughout France, on Shrove Sunday, the succeeding Monday, and Shrove Tuesday, the people dress in masquerade, run through the streets so apparelled in the daytime, and dance all

On denouncing the practice before the removal of *Cook's* gibbet, we also said that the gibbeting, "besides creating a public nuisance, *exposes the law to insult*, and adds a *new crime* to our overloaded penal code, by making it an indictable offence to steal the body from the gibbet, as the friends and relations often did in former times, and will do again :— to support one barbarity, the law must have recourse to another; and, to preserve a public nuisance, wage war against the natural affections of the human heart."—Thus has the law been insulted by the removal of *Jobling's* body from the gibbet; but better that it should be so removed, than that the vile nuisance should continue. We trust that it is the last experiment of the sort, and that, with the body of *Jobling*, the gibbet itself may be for ever buried.—*Morning Herald*, Monday, September 10, 1832.

Case of Dennis Collins, for a treasonable assault upon
THE KING.

It is right that the person of the King should have been declared by the law to be inviolable. It seems proper that an assault upon the person of the King should be subject to a higher degree of punishment than an assault upon any other individual. These points, we think, may be conceded by the advocates of constitutional freedom under a limited Monarchy, in consideration of the high dignity of the kingly office; although a maxim, which has often been pronounced from the judicial Bench, declares that 'the law is no respecter of persons.' Making the case of the King an exception to

'night. The head of *Carnus* had hardly fallen under the axe of the 'guillotine on Monday last, when a body of masquers approached the 'scaffold. Some religious persons hastened to remove the mangled 'corpse, and had scarcely time to bear it off, when the masquers surrounded it, and, hand in hand, commenced a *dance* to their own singing—the blood still smoking on the scaffold!

this maxim, it is not necessary to go the length of contending that a personal offence, which would only constitute an assault when directed against any other individual, should be punished as high treason in the case of the King. We say that the doctrine of the inviolability of the Royal person does not make it necessary to go this length; for, the offence of assaulting the Sovereign may be severely punished as a *sedition* act, without confounding it with *high treason*—the highest crime known to the law, and which is properly a premeditated attempt upon the life or liberty of the King, connected with an intention to subvert the existing Government.

Accordingly, the ancient laws of this country did not punish an assault upon the person of the Sovereign as high treason. The great Statute of Treasons, the 25th of Edw. III, which first defined the crime, and guarded the subject against the perils of constructive treason, contains no such offence as a mere assault upon the person of the King. Under that Statute the treason must consist in “the compassing or imagining the *death* of the King;” and although the King’s death might not follow, it was necessary to prove, by some overt act, that the King’s *death* was intended.

It is clear, therefore, that if *Dennis Collins*, the sailor, who has just been convicted of high treason, and sentenced to the penalties thereof, for an assault upon the King, had been tried under the statute in question, he must have been *acquitted*, seeing that the verdict of the Jury was, ‘We do not find the prisoner guilty of intending to destroy His Majesty, but, on the fifth count, of *intending* to do his Majesty bodily harm.’

It is certain that His Majesty did not, in reality, suffer any bodily harm from the act of the prisoner; but as the indictment only charged him with the *intention*, it was not necessary that actual bodily harm should be proved. But how does the intending to do the King some bodily harm, come to be high treason, and to be confounded with the

crime of compassing and imagining his *death* ? The statute which has made it so is, in fact, one of the sanguinary Acts of comparatively modern days, which was passed at a time when the Draconic spirit pervaded our legislation, and every Session brought forth new statutes of blood. It was during the Ministry of PITT, when the doctrine of constructive treason was pushed to the most violent extreme—when the Constitution of England was twisted like a nose of wax, and the British parliament was as servile a tool of power as the Turkish Divan—that the Act was passed under which *Dennis Collins* has been tried for an assault upon the King's person, and sentenced to be *hanged and quartered* ! If England had had a free representation at that time, such an Act would never have been passed ; and it is not likely a reformed parliament will long allow an Act to remain on the Statute-book, which is so at variance with the principles of rational and proportionate justice, as to *confound an assault with the greatest crime known to the law*.

But, supposing the law was unexceptionable, the facts of the case in question are such as might fairly induce a Jury to presume *insanity*. If that be an insane act for which it is impossible to assign any rational motive—if that be an insane act by which the perpetrator forfeits his life in the open face of day—in the midst of a crowd—ostentatiously courting exposure, and not having the hope or chance of any guilty advantage from his crime—never has there been a more insane act than that of *Dennis Collins*. A Berkshire Jury have, in their wisdom, thought otherwise.* We believe the result would have been different if the trial had

* In justice to the Jury, we give the following provincial intelligence, taken from a newspaper published soon after the trial:—‘ It is well worthy of remark, that the whole of the Jury state that they supposed, by acquitting Collins of the intention of killing His Majesty, and finding him guilty of the intent to maim and wound, they would prevent his being subject to *capital* punishment ; and they also state, that if they had known the verdict they found,

been held before a Jury of Londoners—not from purer intention, but because London Juries are more enlightened, and more capable of thinking for themselves than country Juries, in general, are. How else did it happen that *Margaret Nicholson* was treated as a lunatic, and *Hatfield* was found insane, while *Dennis Collins*, whose act was quite as wild and irrational as theirs, and had nothing of the character of premeditation—nothing of the unequivocal intention to destroy the *life* of the Sovereign that theirs had, is considered a responsible agent, and sentenced to be hanged and quartered?

Margaret Nicholson assailed the person of *GEORGE III.*, with a knife or dagger which she had cautiously concealed. Here the use of the mortal instrument proved that the intention was the *death* of the King; and the concealment which she practised in approaching His Majesty, shewed that her madness had method in it. As to *Collins*, he neither used a deadly weapon, nor attempted to avoid detection; but flung the stones openly, which it appears he picked up at the back of the Royal stand, as if he were performing the most innocent or meritorious act:—a tolerably conclusive proof of the extinction of the sense of right and wrong at the time of committing the act—his sufferings, his want, and some liquor, probably producing that excitement, which so operated upon the wound in his head, which he had received in fighting the battles of his country, as to produce temporary derangement.

It is true, the Jury have, since the trial, signed a petition for mercy to the unfortunate man. Even if they had not, we are quite confident that the beneficent prerogative which the Constitution has deposited in the Royal bosom, will not, in the present instance, be powerless to mitigate the san-

* could have had the effect of taking his life, they would rather

* have acquitted him altogether. However, as there seems no doubt

* of His Majesty's taking a merciful view of the case, the intentions

* of the Jury will, in substance, be carried into effect.'

guinary sentence of the law. Hatfield attempted the life of GEORGE III with a loaded pistol, which he discharged at him while seated in his box at the theatre; and, for aught we know, he lives still in the seclusion of a lunatic asylum—the fittest place for the wretched, crippled, and, evidently, deranged *Collins*; but, even if he be considered to have had sufficient sense of right and wrong at the time of committing the offence, to make him a responsible agent, surely His Majesty will not seek for any consolation from shedding the blood of the miserable man, whose “quarters” the barbarous law so humanely places “at his disposal.” No, we are convinced the Royal mind, consulting its own generous feelings, will turn with natural disgust from the sacrifice offered to it; and, by administering justice in mercy, by exercising the noblest attribute of Kings, give the Throne a moral protection, stronger than any which it can receive from the terrors of revengeful law.*—*Morning Herald, Friday, August 24, 1832.*

Attempt of LOUIS PHILIP to suppress the freedom of the Press by means of capital punishment.

It really seems as if LOUIS PHILIP were most anxious to prove to all the world that the hostility with which CHARLES the Tenth regarded the freedom of the Press, was not more malevolent than his own; yet CHARLES reigned by “divine right,” while LOUIS PHILIP has no title to a crown but what he derives from a revolution—a revolution, too, which the Press chiefly brought about, by the devoted and heroic resistance that a few Opposition Papers made to the illegal ordinance by which *liberty of opinion* was to have been suppressed for ever in France. But among the Papers which offered that heroic resistance to the

* HIS MAJESTY exhibited the clemency of his disposition by immediately extending to the convict, *Dennis Collins*, the mercy of the Crown. The punishment of death was accordingly commuted.—ED.

despotic *ukase* of the Polignac Administration, none was more distinguished than *The National*—the very Paper which the Government of LOUIS PHILIP has just now selected, to try the experiment of silencing the Press, by holding over it the terrors of a “law of blood.”

The system of *State prosecution for opinion*, which was one of the principal wheels of the machinery of CASIMIR PERIER's Government, has been worked almost as actively as ever, since that Charlatan-statesman, and slave of the Holy Alliance, has been called to his account. It was the principal Editor of *The National*, M. CARREL, who threw down a gauntlet to CASIMIR PERIER, which the latter had not, with all his boasting, the courage to take up. By so doing, that gentleman, at great personal risk, rendered an essential service to all the independent Editors in France; yet, bad as CASIMIR PERIER was, he had never dared to have an Editor prosecuted for any political opinion circulated through his paper, upon a *capital charge*. No—LOUIS PHILIP himself, the King of the barricades, gives the first example of this sort, and perhaps the last.

The worst construction that we should have thought the most astute Crown lawyer could have put upon the paragraphs in *The National*, which have been *capitally* prosecuted, would have been one of *sedition*. Not satisfied with that, LOUIS PHILIP demands the life of the Editor and Printer. He calls in, as his auxiliary, against the too-free opinions of the Press, the exterminating terrors of the *guillotine*. CHARLES the Tenth was more humane; for, it was more merciful to put down the Press altogether, than to make the *lives* of those who conduct it, answerable for its opinions.

When we speak of LOUIS PHILIP as the author of the prosecution of M. PAULIN, the responsible Editor, and M. HINGRAY, the Printer of *The National*, on a capital charge, we do so because LOUIS PHILIP takes upon himself to act as Minister of State, and is, in fact, the President of

his own Cabinet Council. We would not make the King of England accountable for any act of State ; because he is obliged to act according to the advice of his Ministers—the Constitution not allowing him any power of controuling their deliberations. If, indeed, he does not like the advice which his Ministers give him, he can dismiss them, and take others ; but this only shifts the responsibility from one set of men to another. He cannot act for himself. He must have advisers accountable to the law, as his own person is inviolable ; and it is in this sense the maxim is to be understood, that “ the King can do no wrong.”

One of our Government Evening Papers, very recently, in adverting to the leading part which the Citizen-King of the French takes in the deliberations of the Cabinet Council, spoke with admiration of the ability which he shewed in out-arguing his Ministers. It was a silly commendation. If LOUIS PHILIP had common sense, he would not, through mere vanity, play a part which may involve him in the most awkward responsibility.

The part which LOUIS PHILIP took at the time of the treason of DUMOURIER is matter of history—no penal prosecution can erase the memorial of it from an imperishable record. The prosecution of M. PAULIN and M. HINGRAY only more decidedly revives it ; and their *acquittal* heaps upon the “ Citizen-King” and his Government new disappointment and mortification.

If this capital prosecution had succeeded, every Editor of a Newspaper, who wrote or published such sentences as some of those charged against the defendants, should understand the “ liberty of the Press,” as granted by the “ Citizen-King,” with the *guillotine* in the perspective. Two of the sentences prosecuted were, it appears, the following :—“ Care “ must be taken not to make moderate men violent by “ laughing at moderation ;” and, “ in the present order of “ things there are two interests, two principles to conciliate, “ if possible ; and in favour of one of which, events may

“render it one day necessary to decide.” Only think, English reader, of the sort of freedom of the Press which the “Liberal”—the *revolutionary* Government of France allows, when the blood of the Editor and the Printer of a Newspaper is demanded for such sentences as these !

If LOUIS PHILIP really desires to set the Press at defiance, we can tell him how to do it without penal prosecutions. Let him *observe the promises* which he gave at the time of the *revolution*, and which he has most shamefully falsified ;—let him cease to be the enemy of constitutional freedom, and the slave of the Holy Alliance, and he may smile at the censures of the Press—if the Press should still be censorious.—*Morn. Herald, Monday, September 3, 1832.*

*Remarks upon the Report, made to the House of Commons, of the
Select Committee upon Secondary Punishments.*

Through “evil report and good report” we have laboured for a long time to divest the Penal Code of England of its sanguinary character, and make it worthy of an enlightened age and a civilized people. When that which is called public justice has nothing to do with reformation of morals, but attempts the repression of crime by incessantly working the apparatus of extermination, it is essentially barbarous. It deserves rather the name of public vengeance than of justice, and is always as impotent in its effects, as it is excessive in its severity.

Since the ancient laws of France were superseded by the CODE NAPOLEON, modern history presents no instance of a nation with laws so vindictive, and at the same time so inefficient, as those of England. The multiplicity of capital punishments, which not long ago overloaded the Statute-book, made it a difficult matter to open it, at any page, on which the word “*death*” was not inscribed. If ever there was a volume of grim and terrible legislation, this was one. It was the *manual of the executioner*—Vengeance marked it

for its own. What was the result? A brutalizing effect upon one portion of society—the exciting of disgust in the mind of another—the enlisting of public feeling on the side of the offender; and against the law—the consequent *uncertainty of punishment*, and *increase of crime*;—so that, in proportion as the ministers of Vengeance were wearied with the work of blood, the harvest of crime became more redundant. It sprang up, and ripened faster than the sickle of Death could mow it down; and legislators who had neglected all moral modes of repressing crime, and were too indolent or ignorant for the labours of preventive or reforming legislation, wondered that brute force produced no improvement in public morality! The wonder would be if it did—for such *legislation* is in itself a *crime*.

While reliance was placed upon the efficacy of punishments of blood, the minor penalties of the law were considered of such trifling importance, that very little or no care was taken to select judicious ones, and to apply them with a view to prevention, rather than mere temporary suffering and coercion. Since the system of sanguinary law has been shaken to its foundation—since the battery of PUBLIC OPINION has been so directed against it, that a serious breach has already been made in the strongest part of that Draconic edifice, which threatens, “like a mutilated structure, soon to fall”—since the horror of *judicial murder* has pervaded the land from one extremity to another, it has become necessary for our legislators to give themselves some trouble relative to *minor*, or, as they are usually called, *secondary punishments*. Never had any country worse than those which England has at present. Those who shall successfully exert themselves to improve them, or substitute better, will have done a great service to public morals, and have discharged a truly useful and patriotic duty to their country.

Our readers may recollect that, towards the close of the last Session of Parliament, the *Select Committee* appointed to enquire into the best mode of giving efficiency to secondary

punishments, made a Report, which was ordered to be printed. The collision of political parties at the time was not favourable to the examination of a subject which demanded calm and patient enquiry, and was destitute of all the attraction of political excitement. It is, however, a document of great importance, and contains matter well deserving of public attention ; though we are sorry to find that this able and intelligent Report, and the useful suggestions which it contains, are not appreciated at the Home Office as they ought to be, and as they certainly would be, if Lord MELBOURNE and Mr. LAMB set that value upon the improvement of our penal system which it deserves, and which no person of enlightened capacity ever underrated.

Truly do the Committee state, in the outset of their Report, that few questions more deeply affect the interests of society than that which they were appointed to investigate ; and that

‘ The management of prisons, and the treatment of criminals sentenced to punishments short of death, may, perhaps, be considered as exercising over the morals of the great mass of the people an influence inferior only to that arising from careful and religious instruction.’

In reference to that most serious evil, which, if not timely checked, threatens worse consequences to society than careless Statesmen calculate upon—we mean the increase of crime—the Committee say,—

‘ The rapid and constantly progressive increase of crime in this country has for many years excited the alarm, and baffled the efforts of the Philanthropist and the Statesman ; and hitherto every effort at prevention, whether by the extension and amendment of the Criminal Code, or the establishment of a more efficient Police, has failed to arrest its progress, or to diminish the frightful catalogue which our criminal records annually present.’

The Calendar of the recent Old Bailey Sessions is certainly not calculated to dispel this alarm ; but we must defer the further consideration of the contents of this important Report to another opportunity.—*Morning Herald, Friday, September, 28, 1832.*

The same subject continued—increase of crime attributable, in great degree, to the want of proper discipline in gaols.

In reference to that important and painful subject, the increase of crime, the Report of the Select Committee upon secondary punishments, to which we have already adverted, gives the certain calculations, founded upon official documents, to prove the fact, and the extent, of increase during a period of 21 years, ending with the year 1831. It appears that during the seven years, from 1810 to the close of the year 1817, the number of persons charged with criminal offences, and committed to the different gaols of England and Wales, for trial at the Assizes and Quarter Sessions, was 56,808; for the seven following years, or to the end of 1824, the number was 92,848; and during the seven years, ending with 1831, the number had been augmented to 121,518, or more than double that of the first septennial period. Of those several numbers there were respectively convicted in the first period, 35,259; in the second period, 62,412; in the third, 85,257; shewing an increase of convictions in the second period, as compared with the first, of 78 per cent.; and in the third, as compared with the first, of above 140 per cent. These calculations sufficiently prove the fact of the increase, and that its amount of increase is in an alarmingly rapid ratio. Upon the results thus obtained, the Report proceeds to make some observations well worthy of public attention.

‘The great increase,’ says the Report, ‘in the period ending the 31st of December, 1831, as compared with that of the period ending the 31st of December, 1824, may, in some degree, be attributed to the Act of the 7th George IV, cap. 64, which provides for the payment of expences to prosecutors * in cases of felony.’

* The following remarks, taken from the *English Chronicle*, of Saturday, September 8, 1832, may be inserted here, although their principal tendency is to point out a serious abuse in the administration of justice :—

‘During the late York Assizes, Baron BOLLAND took occasion

There can be no doubt of this ; for the allowance of such expences naturally tended to encourage prosecutions. The Report goes on to say—

‘ But no such cause can be assigned for the increase in the seven years ending in 1824, as compared with the seven years ending in 1817, the transition from war to peace ; and the consequent partial cessation of employment, together with the great increase of population which took place during the second period, might be deemed sufficient to account for a large portion of that increase, did not a reference to the Returns of the Commitments and Convictions from 1810 to 1815, inclusive, shew an equally unsatisfactory result. In the former of those years the number of commitments was 5,146, and

‘ to animadvert, with becoming severity, upon a practice which too frequently occurs, of indicting persons for felony who have been committed for misdemeanor only, and where there is no evidence to support a felonious charge ; but where it is done merely with a view of establishing a claim to the expences of the prosecution. This every one will allow, on the bare mention of it, to be a most scandalous mode of proceeding, and an abuse of the process of Courts of Justice, which ought to be itself *indictable*.

‘ The particular instances which called forth the observations of the Learned Judge, were the cases of the two females who had been committed for trial on the charge of concealing the birth of their illegitimate children. At the Assizes, however, the party prosecuting sent up bills for *murder* to the Grand Jury, though there appears not to have been the shadow of a pretext for such a charge, except what we have mentioned. The Statute allows the expences of the prosecution in the latter case, and not in the former ; and therefore the dreadful stigma of murder was fixed upon those unfortunate women, as far as it could be fixed, by the preferring of a bill for that crime, without a particle of evidence to support it.

‘ The sordid object was, in these instances, defeated : very properly did the Learned Judge, to whom the Statute gives a discretionary power, refuse to allow the expences, observing that it was a most cruel proceeding towards the prisoners, who were thus kept with unfounded charges hanging over them, imputing the worst of crimes ; and he added, that he wished thus publicly to express his disapprobation of the custom, and to make it generally known, that in all such cases, no expences would be allowed.’

‘ of convictions 3,158 ; and they continued progressively to increase until, in 1815, the commitments amounted to 7,818, and the convictions to 4,883, being an increase of the commitments and convictions of above 50 per cent. in the short space of seven years, and this at a period when the vigorous prosecution of hostilities against France may be supposed to have caused an active demand for all the industrious portion of the population, when the events of the war had thrown the whole commerce of the world into the hands of Great Britain, and when agriculture and manufactures were spreading with a rapidity and to an extent hitherto unknown.’

What discoverable cause is there of the enormous increase of crime during the period specified ?—for it is evident that the peculiar circumstances of the country at the time afford no solution of the problem. Those circumstances were of such a nature as to induce one to conclude, *a priori*, a diminution rather than an increase of crime. The Committee undertake to state the cause of, at least, a *great proportion* of this increase ; and in their Report they say—

‘ Although great improvements have of late years been made in the management of our prisons, your Committee are of opinion that, *in the state in which they still remain*—in the absence of a uniformity of discipline, either before or after trial—and in the inadequacy of the secondary punishments, either to *reform* criminals, or *deter* from crime—*ample cause* may be found, exclusive of all other considerations, for much of the continually alarming *increase* in the criminal calendar.’

The Report then proceeds to suggest such changes of the system as the Committee consider most likely to *remedy* the existing evil.—*Morning Herald, Tuesday, October 2, 1832.*

The same subject continued—Treatment of prisoners before, as well as after, trial.

The importance, in a national point of view, of an effective system of secondary punishments for crime, is admitted on all sides. The lamentable consequences of the present defective system in the rapid and alarming increase of crime, we have shewn in former articles ; and, in reference to this

subject, the Select Committee of Parliament upon secondary punishments have classed their Report under the several heads of *Prison Discipline—the Penitentiary—the Hulks—the Penal Colonies*.

As to the first, or Prison Discipline, a branch of penal justice, of primary importance, it relates to the government of prisons, as the term implies, and the treatment of the persons confined within their walls. Upon the treatment which prisoners receive, it mainly depends whether prisons are to be truly regarded as houses of correction, or as nurseries of crime. As things are at present conducted, they are almost invariably the latter, in every part of this kingdom; so that while the public have to pay vast sums of money for the prosecution of offenders, the system, under which they are punished, is so constructed as to reproduce its own cause, and to create more crime than it cures. Thus the public pay for the repression, and pay also for the production of crime. Penal justice with one hand reaps the ripened crop, and, with the other, throws the envenomed seed into the heart, to produce a harvest of more baneful luxuriance.

The Committee truly say—

‘ They cannot too strongly express their opinion of the vast importance of this first branch of the enquiry; and when they observe, by the Returns laid before them, that in the last two years no less than 172,159 persons, including those committed on summary conviction, but *exclusive of debtors*, have passed through the different gaols in England and Wales, and that the *moral condition* of this vast multitude must, in all cases, to a certain, and in many, to a great degree, have been affected by the state of those gaols, they consider that no arguments can be necessary to convince the House of the propriety of this investigation. A House of Correction, consistently with its name, should offer the prospect of diminishing the amount of crime, either by the severity of its discipline, or, by reforming the morals of those committed to it. In both these essential particulars many of the prisons are lamentably deficient: they hold out scarcely any terrors to the criminal, while, from the inefficiency of the control exercised over him, and the impossibility of separating the most

‘hardened malefactor from those who, for the first time, find themselves
 ‘the inmates of a gaol, they tend to *demoralise* rather than *correct*
 ‘all who are admitted within the walls.’

It is a melancholy state of things when places of penal coercion are the hotbeds of licentious passions, and Houses of Correction assist in giving a wider range, and more malevolent influence, to the shameless hardihood of impenitent depravity.

In pursuing this branch of enquiry, the Committee consider the treatment of prisoners both *before* and *after* trial. If it be right to adopt regulations which may protect the less guilty from the malignant influence of the more depraved and hardened offenders *after* trial, it surely is right that *before* trial, those accused of comparatively trivial offences, should not be mixed up with those who are called upon to answer charges of a more atrocious nature. It is true, both may be innocent; but neither can be prejudiced by an arrangement which is calculated to protect those who are really innocent from possible contamination.

The importance of judicious and rigidly enforced regulations, to obviate the demoralizing consequences which the present promiscuous grouping of the inmates of our gaols produces, will not be disputed by any one who has practical knowledge of the subject, and who is more desirous of the prevention of crime than its punishment.

The Committee, who made a searching enquiry into the moral effects of indiscriminate imprisonment, have no hesitation in declaring it to be their opinion, confirmed by the testimony of all the witnesses examined by them, that—

‘It is almost impossible for any but the most degraded criminal
 ‘to be confined, even for a short period, within the walls of the prison,
 ‘as at present regulated, without injury to his morals;—that the most
 ‘virtuously-constituted mind would find it difficult to escape contamination; but that where moral and religious principles are but feebly
 ‘implanted, their total overthrow may be expected.’

Can we wonder, when such is the contaminating influence

of our places of coercion and punishment, that crime is greatly on the increase? Would not the wonder rather be, that such a system should exist, and yet crime be diminished? Could such a consequence flow, from such a cause, without a moral miracle?

It is further stated, from the evidence of the Keeper of Newgate, and the Governor of the House of Correction in Cold Bath Fields, that the persons confined in those prisons sleep in rooms containing from 15 to 20, who, during the day, are associated together in yards, in masses, varying from 60 to 130! The Chaplain of the Penitentiary stated, in addition to this, as the result of information collected from persons coming from gaols in various parts of the kingdom, that—

‘Prisoners, before and after trial, are under no efficient superintendence—that there is no restraint attempted—that they are mixed together—the old and the young, the most hardened and most inexperienced, the prostitute, the modest woman, and the young girl.’

It is observed, that gaols under corporate jurisdictions are in a more deplorable condition than any other, as to moral government.

The Gaol Act—the 7th Geo. IV, cap. 64—which was passed with a view of remedying what may be called the *moral* gaol-distemper, which the system generates, was wholly inadequate to the purpose. It made no provision for dividing prisoners, before or after trial, into more than two classes. It is justly observed, in reference to that Act, that—

‘In the case of the *untried*, it associates the most hardened offenders with those who may be guiltless of crime—and, that even an innocent man sent for trial, can hardly escape contamination.’

While the Committee declare that none but a moral classification can be effectual, they acknowledge the difficulties which stand in its way; and in the meantime they propose, as the only alternative, the *separation of prisoners*,

both before and after trial.—*Morning Herald, Wednesday, October 10, 1832.*

*Observations on the appointment of Sir Thomas DENMAN as
Lord Chief Justice of the King's Bench.*

The appointment of Sir Thomas DENMAN to the exalted station of Chief Justice of the King's Bench, is one that cannot fail to be acceptable to the Bar, and give general satisfaction to the country.

High office in the profession of the law has been but too often the reward of dereliction of principle and subserviency to power. It had become so much so at one time, that the *independence of the Bar* was regarded, by the public, as a legal fiction. There have been periods, when the faithful and fearless discharge of the duties of an Advocate to his client was considered a crime, which could only be expiated by such acts of political abasement as argued a sincere repentance of the practice of so inconvenient a virtue. Sir Thomas DENMAN has risen in despite of the obstacles which an adherence to principle, and a manly consistency of character, oppose to the advancement of those who seek the rewards of an honourable ambition. His elevation to the head of the COMMON LAW is therefore not only a great public benefit, but an instructive professional example.

The late Chief Justice * made his way to eminence and power, by labouring as a legal pioneer for the law-officers of his day. His talents justified the choice which gave him the chief seat on the Bench ; but, that choice would not have fallen upon him, if he had relied upon his talents and learning alone. At the Bar he was remarkable for that meekness of deportment which never disturbs the repose of authority, or, encounters the frowns of power. On the Bench he atoned for his long career of submissiveness, by assuming a tone of authority more vehement than dignified, and by

* Lord TENTERDEN.

endeavouring to reduce the independence of the Bar to the level from which he rose. A greater defect was his habit of invariably leaning to power in questions affecting the rights and liberties of the subject, although there could not be an abler or fairer Judge for the decision of questions between private individuals. The PRESS he would, if possible, have bound in chains of iron. He had a sincere and unqualified abhorrence of that freedom of opinion which constitutes the real usefulness of the PRESS as a political and moral agent. His adroit management in gaining over the acquiescence of a Jury in his views, without seeming to controul their verdict, has been adduced as a proof of his judicial dexterity. Seeing what his political sentiments were—how strong his bias in favour of any thing clothed in the garb of authority—and how faithful his attachment to the venerable prejudices of his profession—it seems a dexterity more to be wondered at than imitated; and, sure we are that Sir Thomas DENMAN will no more adopt this mode of managing Juries, than he will emulate Lord TENTERDEN in his illiberal sentiments, and his hostility to all political and all legal improvement.

The last effort of the present Chief Justice, as a Member of the House of Commons, was one which will associate his name with the progress of beneficent reform in the laws of his country. His bringing in a Bill, which passed the Commons in the last Session, to abolish the punishment of death in *all cases of forgery*, was a noble redemption of the pledge which he had previously given;* and, although the judicious simplicity of that measure was marred in the Upper House by two sanguinary exceptions,† he is equally entitled to the public gratitude.

That, with an habitual suavity of manners, Sir Thomas DENMAN has firmness enough to support the dignity of station against all encroachment, has been sufficiently proved, not only by his intrepid energy as an Advocate, but by his

* See Vol. I. p. 303.

† See Vol. I. p. 314.

decision of manner in the City Court, where he so long presided. And here let us pay that tribute of applause, to which the Corporation of London is justly entitled for having, with such disinterested patriotism, exercised its power in conferring an important office upon an Advocate, whose honest and fearless discharge of his duty to his client drew upon him the persecution of power. It must be gratifying to that Corporation to observe, that the man whose merits they had appreciated and rewarded, in what the world looked upon as the adversity of his fortunes, is now chosen by his Sovereign to administer the laws of England, and uphold the purity of Justice, in the first Court of COMMON LAW Judicature in the realm.—*Morning Herald, Wednesday, November 7, 1832.*

ADDRESS of the SOCIETY for diffusing Information on the subject of CAPITAL PUNISHMENTS, to Lord Chief Justice DENMAN, on his appointment.

In another column will be found the copy of an Address lately presented by "The SOCIETY for the diffusion of information on Capital Punishments," to the LORD CHIEF JUSTICE of the King's Bench, with his Lordship's Answer. Our readers are aware of the constant and persevering efforts which we have made, during some years past, to induce our legislators to reform that chaotic mass of penal statutes, in which, as if to mock the growing energies of civilization in this country in other respects, the spirit of barbarism resides. To effect this great object, the talents and virtues of such enlightened senators as MEREDITH and ROMILLY were unavailing, because they were not supported by the Press. Since we commenced our labours, public opinion has been thoroughly awakened to the subject, both in this country and in France. In both kingdoms the aversion to the judicial destruction of life becomes continually stronger. Since the time that we exerted ourselves to save the lives of the delin-

quent Ministers of Charles X., that feeling, so characteristic of moral improvement, has made great progress.*

The principles of criminal jurisprudence which we advocate, are those which are also supported by the SOCIETY to which we have alluded. The Bills which in the last Session repealed the penalty of death for all cases of *forgery*, (with two exceptions, introduced in the House of Lords,†) which also repealed that penalty for all cases of counterfeiting *the coin*,‡ and for several cases of *larceny*,§ attest the advance which has already been made, in a comparatively short time, to substitute rational and corrective punishments for those of revenge and extermination. The Forgery Bill of Chief Justice DENMAN will make his memory revered when the perishable conflicts of party shall have been forgotten. Lord AUCKLAND has the honour of having introduced the Bill on

* PRIVATE CORRESPONDENCE.

Paris, July 25, 1832.

I feel extreme pleasure in adverting to the result of the trials of the Carlist conspirators of the *Rue des Prouvaires*.

On this affair I shall have much to say in my next. For the present I shall merely observe that the mild nature of the sentences is due, in great measure, to the British Press in general, but in a more especial manner to the various articles published by the *Morning Herald*, and the tracts of the London SOCIETY for the Abolition of the Punishment of Death. Of this I shall give you proofs at a future day. There is, I shall only further remark now, another pleasurable reflection, in contemplating the escape of the persons above named from the *guillotine*—namely, that it almost insures that capital punishment will not be inflicted on any of the parties who may be convicted for participation in the insurrection of the 5th and 6th of June.

† These two exceptions (introduced in the 2 & 3 Will. IV, cap. 123,) were the work of the Marquis of LANSDOWNE and Lord WYNFORD, as will be seen on reference to our history of the Forgery Bill of 1832.—(*Vide Vol. i. p. 314.*)—ED.

‡ 2 Will. IV, cap. 34.—*See our First Vol. p. 261.*—ED.

§ 2 & 3 Will. IV, cap. 62.—*See our First Vol. p. 273, et seq.*

Coining; and Mr. EWART, by one short Act cutting off a variety of penalties of blood, deserves well of his country and of mankind.

In remarking upon these reforms and their effects, the Lord Chief Justice well observes, that the judicial duty has been divested of *much that made it painful*, by the improvements of late years, which, he adds—

—‘is mainly to be ascribed to the enlightened and persevering benevolence of your SOCIETY. Through their humane, but temperate exertions, the temptation to trifle with the sacred claims of truth’ [in the cases to which the improvements apply] ‘is removed; those distressing conflicts are avoided, by which, in former times, the arm of Justice was paralysed; and opinion lends a willing and conscientious aid to authority.’

These are the judicious sentiments of an enlightened mind—equally free from the intemperance of a rash theorist, and the shackles of professional prejudice. Nor need a Judge, in the most exalted station, be ashamed of taking a rational interest in the mitigation of the vindictive character of our criminal code, when the great BACON, the Chancellor of England, and the unrivalled luminary of modern science, said—‘*Let there be no rubrics of blood.*’—*Morning Herald, Tuesday, January 8, 1833.**

** Presentation of an Address, from the SOCIETY for diffusing Information on Capital Punishments, to Lord Chief Justice DENMAN.*

The Committee of the above-mentioned Society having, at a meeting held at Plough-court, Lombard-street, on the 19th of December last, agreed to an Address to be presented to the Lord Chief Justice of the King’s Bench, to congratulate him upon the Appointment to his present exalted station, nominated five of their members as a deputation to wait upon his Lordship with the Address. On Saturday, the 29th of December, the day fixed for receiving the Address, the deputation, consisting of the President, William ALLEN, Esq., F.R.S.; Edward FOSTER, Esq., F.R.S.; J. Sydney TAYLOR, A.M.; Warwick WESTON, Esq.; and John T. BARRY, Esq., waited upon the Lord Chief Justice, at his residence, Russell-square, and pre-

Remarkable case of Shoplifting—and fate of Mary Jones.

The constitutional maxim, that “all persons are equal in the eye of the law,” will be, with good reason, supposed to be

sented the following Address, which was read by one of the deputation:—

‘ My Lord—The Committee of the Society for diffusing Information on the subject of Capital Punishments, beg leave to express their sincere satisfaction at an Appointment, which, by raising your Lordship to your present exalted station, has given a Chief Justice to the highest Court of COMMON LAW Judicature in the realm, whose legislative labours, when Attorney-General, extracted from a portion of our laws that “vindictive acerbity which deadens their execution;” and, by correcting the fatal errors of intemperate lawgivers, removed some of the most serious impediments to the effective administration of justice.

‘ In alluding to the Bill which your Lordship introduced, to abolish the Punishment of Death in all cases of Forgery, the Committee take this opportunity of tendering their grateful acknowledgments for that great measure, which, notwithstanding the exceptions introduced in the House of Lords, has removed many sanguinary enactments from the Statute-book, and afforded a beneficent example of rational and judicious innovation upon the vindictive severity of the Criminal Code.

‘ Aware that your Lordship is under the imperious and painful necessity of administering the laws as you find them, the Committee are also aware, from your uniform conduct previously to your present elevation, as a Judge in a criminal Court, that it is your invariable disposition, as far as the laws allow, to administer justice in mercy. It must, therefore, be a great satisfaction to your own mind to have contributed to the commencement of that improved system of legislation, which, while it protects the interests of society, and vindicates the authority of justice, relieves the judicial power from a painful discretion, by causing that spirit of rational lenity to reside in the body of the laws themselves, which will give their operation the irresistible support of enlightened opinion.

(Signed) ‘ W. B. SANSFIELD TAYLOR, *Hon. Sec.*’

His Lordship, who received the deputation in the most kind and affable manner, returned a verbal answer, the sentiments of which he

a legal fiction, if the "respectable" shoplifters, who were taken *flagranti delicto* at Crockford's Bazaar, be not brought to the bar of public justice.

subsequently embodied in a written one, transmitted to the President, of which the following is a copy :—

‘ Russell-square, Dec. 29, 1832.

‘ My dear Sir—I beg to offer you as President, and through you to the Committee of the Society for diffusing Information on Capital Punishments, my thanks for the Address you have transmitted on the occasion of my late Appointment.

‘ The satisfaction expressed at that gracious mark of His Majesty’s favour—the approbation of my efforts in Parliament to mitigate the severity of the Criminal Law—the confidence in my future judicial conduct, founded on the experience of the course I pursued as Common Sergeant—are in the highest degree gratifying and encouraging.

‘ It is needless for me to observe, as the observation has been made by the Committee, that the duty of a Judge is of a limited and definite nature: he is under the necessity, sometimes a very painful one, of administering the laws as he finds them. That this duty has, however, been divested of much that made it painful, by the improvements of late years, is mainly to be ascribed to the enlightened and persevering benevolence of your Society. Through their humane but temperate exertions, the temptation to trifle with the sacred claims of truth is removed; those distressing conflicts are avoided, by which, in former times, the arm of Justice was paralyzed; and opinion lends a willing and conscientious aid to authority.—I am, with great truth and esteem, my dear Sir, your faithful servant,

‘ Wm. Allen, Esq.’

(Signed)

‘ THOS. DENMAN.’

His Lordship conversed with the deputation for more than half an hour on the state of the Criminal Law, and some of the further improvements it requires, which are contemplated in order to make its provisions more effective for the security of property, and repression of crime, by rendering them more consonant with the dictates of rational and dispassionate justice, and thereby withdrawing from the Jury-box, and from Courts of Criminal Law altogether, the great temptation which now exists to violate the sanctity of oaths. We understand that the views hereafter to be developed on this important subject, affecting, as it does, the morals of society, the protection of property, and the *life of man*, will be found to be such

As the case stands at present, there is strong ground for the presumption that justice will be defeated; while the persons whose duty it is to put the law in motion, are engaged in shifting from one to another the blame of that negligence, or something worse, in which all seem to share. The prosecutor, or rather the person on whom the law casts the duty of prosecutor, accuses the police officers; the officers recriminate upon the prosecutor; the young woman who attended the bazaar when the theft was committed, complains of nervous infirmity; the inspectress who was present at the search, declines to take any step towards assisting the course of justice without the permission of her master. This is, of course, not a conspiracy to evade the law—it is only a singular coincidence of circumstances, all converging to the one point, and, which is as likely to be effectual in obstructing justice, as a preconcerted determination to defeat it.

That what has yet taken place in this matter is, as Mr. DYER described it, but ‘a solemn mockery of justice, playing with the criminal jurisprudence of the country,’ there can be but one opinion. At the same time, we must confess our incapacity to understand in what way Mr. DYER intended to facilitate the course of justice, by placing the warrant to be executed in the hands of Goddard, the officer, who knew nothing of the transaction, instead of throwing that duty upon Clements, who did know something of it. Mr. DYER says that Clements, if he had gone to execute the warrant, could only say ‘he saw such and such persons leave the bazaar, and go to such a place; and had he gone and taken two persons into custody, he would have been liable to an action.’ There is, however, a material discrepancy between this statement and the reported evidence of Clements himself, as given at the office on Wednesday last. His evidence was, that ‘*he was present at the transaction, but he did not*

as cannot fail to yield much gratification to the enlightened advocates of a judicious and efficient reform of our Criminal Code.—*Morning Herald, Tuesday, Jan. 8, 1833.*

see the ladies searched, nor did he know that any thing beyond the seals had been discovered. He was ordered to follow them when they entered their equipage, which was a very handsome one; and he then jumped into a cab, and, after he *had seen them set down* at their residence in East Sheen, he called and *saw the butler*, who stated that the *ladies resided there*.* Here, according to Clements' own testimony, it appears that that officer was present at the transaction which led to this enquiry. He knew that the two seals had been discovered, though he knew of nothing more; but that was quite enough, inasmuch as the *amount of property* taken is of no consequence in establishing the act of larceny. But, why was it that the precaution was taken of sending Clements after the alleged offenders to trace them to their residence, where, he says, he saw them set down, and ascertained from the butler that it was their home, if that precaution was not with a view to his knowing where to find the parties, and identify them on executing a warrant for their apprehension? Whether Clements knew more or less than is here set forth, he can best tell. One thing, however, admits of no dispute, and that is, that the officer who was *not* employed to execute the warrant, knew *something* of the transaction, and was acquainted with the persons of the alleged offenders; while the officer who *was* employed to execute the warrant, had no knowledge of either the one or the other. It is the duty of the Secretary for the Home Department* to look to this. As Prefect of the stipendiary police, he must not neglect it. This is no time to allow the laws to be administered in so slovenly a manner, to say nothing worse of it, as to break down the confidence of the people in the impartial purity of Justice, and to let the opinion get abroad, that 'there is one law for the rich, and another for the poor.'

If this offence were capital, as it was some years ago, when, to steal any thing from a counter to the value of *five*

* Lord MELBOURNE.

shillings was punishable with *death*, we should have shrunk from the task of assisting that vindictive justice which was of the essence and spirit of sanguinary revenge. But, our abhorrence of the law would have been impartial, and would have equally operated in the case of the rich and the poor; though certainly the latter class of offenders, in cases of theft, are more excusable, as being, from their necessities, more exposed to temptation.

To shew that the law was, at least sometimes, inexorably carried into effect, in the case of poor and destitute persons, when the offence of shoplifting incurred a forfeiture of life, it may be as well to remind the public, just now, of the case of *Mary Jones*, as related in the speech of the enlightened and humane Sir William MEREDITH, in the House of Commons, in the year 1777, when endeavouring to correct the depraved taste of our legislators for enactments of blood.

‘Under the Shoplifting Act,’ he said, ‘one Mary Jones was executed, whose case I shall just mention. It was at the time when *press-warrants* were issued on the alarm about Falkland Islands. The *woman’s husband was pressed*, their goods seized for some debt of his, and she, with two small children, turned into the streets a-begging. ’Tis a circumstance not to be forgotten, that she was very young (under nineteen), and remarkably handsome. She went to a linen-draper’s shop, took some coarse linen off the counter, and slipped it under her cloak. The shopman saw her, and she laid it down. For this she was hanged! Her defence was, “that she had lived in credit, and wanted for nothing, till a press-gang came and stole her husband from her; but since then she had no bed to lie on—nothing to give her children to eat—and they were almost naked; and perhaps she might have done something wrong, for she scarcely knew what she did.” The parish officers testified to the truth of this story; but it seems there had been a good deal of shoplifting about Ludgate. An example was thought necessary (by the Judges), and this woman was hanged for the comfort and satisfaction of some shopkeepers in Ludgate-street. When brought to receive sentence, she behaved in such a frantic manner, as proved her mind to be in a desponding and distracted state—and the child was sucking at her breast when she set out for Tyburn gallows!’

‘To repeal this law,’ the late Lord Ellenborough said, ‘was an *experiment pregnant with danger*.’ It is repealed; and such scenes of blood can no longer be enacted.—*Morn. Herald*, Tuesday, November 27, 1832.

Case of George Wren, convicted at Lewes, of Arson, in setting fire to a Stack of Hay, at Uckfield.

At the recent Winter Assizes for the County of Sussex, held at Lewes, before Mr. Baron GURNEY, a lad, named *George Wren*, aged nineteen, was convicted of having feloniously set fire to a stack of hay in a field at Uckfield, belonging to a Mrs. Fuller. The Learned Judge, in pronouncing sentence of death, adverted to the circumstance of the Jury having recommended the prisoner to mercy, on account of his youth, and declared it to be inconsistent with his duty to attend to such recommendation, advising the unfortunate lad, at the same time, to look for mercy only in another world, as his case was one which required “a severe example.” Accordingly he was left for *execution*.

The crime for which *Wren* has been sentenced to die on the scaffold, would have subjected him to a greater or less term of *imprisonment* in France, according to the circumstances of aggravation or extenuation with which it was attended. The highest, most malignant, and most dangerous case of arson is in that country still punishable with death—such as wilfully setting fire to an inhabited house, by which human life is lost or necessarily endangered; but wide is the difference between that offence and the setting fire to a stack of hay in a field, remote from human habitation, where it is evident that the destruction of human life cannot be the intention of the offender, nor is it endangered by the act. The English law, however, in open defiance of all rational and moral distinctions—in opposition also to all good policy—makes no such distinction. It is equally penal in this country to burn wilfully a heap of straw in a field, and consume a family in their beds. It is blood, nothing

but blood, that satisfies the ferocious genius of English legislation.

There never has been a law against human life on the Statute-book, from those that punished the imaginary crime of *witchcraft* with death,* to those which inflicted the same sanguinary penalty for civil *trespasses*, as cutting down a tree in an avenue, or damaging the chain or rail of a turn-pike-gate, the barbarous execution of which Judges have not attempted to justify on the ground of the necessity of “making severe examples.” But reason and morals are not to be violated by Legislators and Judges with impunity. A higher wisdom than that of human nature will ever vindicate, by the retributive consequences of human error, the overruling authority of its own eternal decrees. Hence those examples of blood are so far from repressing crime, that when our laws were more generally sanguinary than they now are, and the disgusting spectacles of judicial homicide much more frequent, crime rapidly *increased*, and the work of death pallied by unavailing satiety of destruction.†

But it is not alone because the crime, of which *Wren* has been convicted, is one of the *least* aggravated that can occur under the name of *arson*, that we solicit the merciful attention of the Government to his case, and to the recommendation of the Jury. There is another reason for our supplicating that interposition between human life and a dreadful doom which the Regal prerogative can afford—it is, that the unfortunate man has been convicted upon circumstantial evidence of a very doubtful and inconclusive nature—evidence made up of a number of small particulars, all of which, we contend, *could* have occurred *consistently* with the man's innocence, and which, taken at the worst, only establish a *case of suspicion*—a case that justified his

* For several instances of execution for *witchcraft*, see note at page 224, of our First Volume.—ED.

† As an illustration, we may take the offence of Forgery.—See remarks from the *Edinburgh Review*, inserted in our First Volume, page 10, *et seq.*

arrest and detention, in the first instance, with the hope of procuring more evidence, but on which it is a fearful responsibility to take human life.*

Among some sensible observations on this case in the *Brighton Herald* we find the following one, which, in some measure, accounts for the verdict of the Jury :—

‘ From a source of information, not to be disputed, we know that the verdict of the Jury was influenced by some retrospective views of the conduct or character of the prisoner, but which were not brought forward during the trial. The Jury should remember that they are sworn to bring in a verdict according to the evidence.’

The strongest circumstance against the prisoner was, that his shoes appeared to fit some footmarks near the stack ; but

* This case furnishes a practical illustration of the remarks inserted in our former Volume (p. 233), from the *Edinburgh Review*. It is one so much in point, that we beg the reader to turn to those remarks. *George Wren* was imprisoned at Horsham, twenty-four miles from his home :—himself penniless, and his parents in poverty, how was it possible he could obtain the necessary witnesses to disprove a charge which rested upon circumstantial evidence, and consisted of many particulars ? Although a country lad, of nineteen only, he was without Counsel, unless the maxim, that “the Judge is Counsel for the prisoner,” were verified on that occasion : and yet, had such been the case, one or two discrepancies in the evidence should have turned to his account, as well as the absence of any malice toward the prosecutor. There was a difference, in his favour, between the workhouse and church clocks, which was a material point, as every thing hinged upon the time ; and some thought that this was not sufficiently adverted to in the Judge’s summing up. When we recollect that the Jury themselves might have been farmers, anxious to protect their own stacks from incendiaries—that they might have heard an unfavourable report of *Wren’s* previous character, though not spoken to in Court—and that they shewed their anxiety to save his life, by annexing to the verdict their recommendation to mercy, it is the less matter of surprise, that, with a view to his being sent out of the country as a suspected character, they should have brought him in guilty. But it is surprising that he should have been left for execution ; and that the Judge should have declined to report in favour of a commutation of the sentence, although a petition had been

as he was *present at the fire*, assisting to put it out, the fact is worth nothing. We again call the attention of Government to the case of this unhappy youth.—*Morning Herald*, Friday, December 28, 1832.

forwarded to the Home Office, signed, among others, by the *Foreman of the Jury*, stating that ‘the verdict was arrived at on *presumptive* evidence, and that of so *slight a character, as in their opinion, to bring the case of the unfortunate man within the exercise of the royal clemency.*’ (See page 45.) *Wren* suffered death, to the last moment solemnly protesting his innocence. He had been imprisoned seven weeks, and uniformly denied his guilt. In the gaol he wrote some letters to his parents, copies of which lie before us, and cannot be read without painful emotion. The subjoined is an extract from one of them, written shortly before he underwent the sentence :—

“ i Now took my pen for these last time to write to you Father
 “ Mother brother sister and All my Realtions wich [while] it is but a
 “ short time before i [am] called hence to apear before that tribune
 “ Judge—may the lord have Mearcy on Me—wich [while] i took my
 “ trile before the Judge and Jury wich [while] they past the vidict
 “ [verdict] of death on me—what i lay to heartt is—when it comes
 “ over me to think that on [one] flew [fellow] creature should Swear
 “ a nother folówe creature life away wrongfully—I write to you the
 “ Sentement of mind to tell you that when i Mount the Fatle Scaffold
 “ [fatal scaffold] that the lord from heaven Nowes that i am innocent
 “ As child unborn ”

No man of proper feelings will indulge a contemptuous smile while he looks at the production of this poor untutored boy. He will be reminded of the eloquent appeal of LIVINGSTONE (in making his *Report to the Legislature of Louisiana*), when he said—“ I have seen in the gloom and silence of the dungeon the deep-concentrated expression of indignation which contended with grief; have heard the earnest asseverations of innocence made in tones which no art could imitate; and listened with awe to the dreadful adjuration poured forth by one of these victims, with an energy and solemnity that seemed superhuman, summoning his false accuser and his mistaken Judge to meet him before the throne of God.”

What we have stated, in relation to this case, is not founded upon vague rumour. Some gentlemen, who disinterestedly travelled over the ground, and minutely investigated circumstances, came to the melancholy conclusion, that the opinion prevalent in the County was not

Case of George Wren continued—Controversy with the Globe Newspaper upon the subject.

The case of a youth, nineteen years of age, who recently suffered death in the County of Sussex, for setting fire to a haystack in a field, was adverted to in an Evening Ministerial Paper, the *Globe*, of yesterday, with the view not only of justifying that instance of extreme severity, but of proping up, by a shew of argument, the exterminating system that delights in such examples of blood.

We are never sorry to see a Government writer venture into the field of free discussion on this subject. It proves that the patrons of a system, which is one of the worst of the yet subsisting barbarisms of our institutions, are not quite indifferent to public opinion. It proves, too, that they have some misgivings as to public opinion being in favour of those laws which they are in the habit of enforcing. But there is another reason why we are not sorry to see experiments of this sort made with the view of reconciling opinion to the continuance of a penal system, which reason, morality, and dispassionate justice disown—it is, that every time the supporters of this system provoke free discussion, they give it a new shake in public estimation—they loosen its foundations more and more, by inducing people to think about, and thus hasten, the fall that shall confound it with the wreck of other barbarous institutions which advancing civilization sweeps away in its course.

The writer of the article in question calls the man who has suffered, *George Webb*; but, from the circumstances which he states, we presume he speaks of *George Wren*, to whose case we called the attention of Government and the public, while there was yet time to avert the fatal consequences

entertained without reason. But their commendable labours were undertaken too late “for any other effect than,” as Mr. Livingstone remarks, “to add one more example to the many that have preceded “it, of the danger and impiety of using this attribute of the divine “power, without the infallibility that can alone properly direct.”—ED.

of the error, which most persons who heard the trial, or read the evidence, as well as ourselves, were of opinion the Jury committed, in finding him guilty upon circumstantial evidence so slight, as to excite a reasonable apprehension of shedding innocent blood, and incurring the risk of adding the crime of *judicial murder* to that of arson.

We did not state our positive belief in his innocence; but we stated enough to shew that, if even the punishment annexed to the crime was the only just and adequate one, it was a dangerous thing to carry the sentence into execution, without a better warrant than a verdict founded upon such evidence as was given in Court. We will not now enter into that subject again. The case will hereafter come before the public as a ground, among other cases, for the establishment of a regular COURT OF CRIMINAL APPEAL in cases of convictions for felony—an institution of which we insisted upon the necessity more than two years ago; and the manner in which questions, involving the awful consideration of life and death, have been too frequently decided by the secret and irresponsible tribunal of the Home Office, since that time, makes us think such a protection to human life more imperative than ever.

On the question of guilt or innocence we cannot, however, avoid taking the present opportunity of quoting a passage or two from a petition which was presented to Lord MELBOURNE, subsequently to our former article on the subject, and which petition received, in the course of a few hours, in Brighton (there not being more time), upwards of 140 names—among which were, that of the *Foreman of the Jury*, and that of a relation of the prosecutor (the prosecutor lived too far off to be applied to in time—the petition being a last and late resource). It was also signed by two Members of Parliament, four Bankers and Magistrates, two Solicitors of eminence, and many other respectable persons, who were quite as capable of appreciating evidence, and quite as anxious to protect property from wanton destruc-

tion, as Lord MELBOURNE himself; but they did not think that, while guilt was doubtful, the example of blood could have any salutary effect. They addressed the Secretary for the Home Office in the following language:—

‘ That *George Wren*, labourer, aged nineteen years, was tried at the Winter Sussex Assizes, on the 18th of December last, before Mr. Baron GURNEY, on a charge of arson, and was found guilty, the Jury at the same time recommending him to mercy on account of his youth; that your Petitioners humbly submit the verdict was arrived at on *presumptive evidence*,* and that of so *slight* a character, as, in their opinion, to bring the case of the unfortunate man within the exercise of the Royal clemency.

‘ Your Petitioners are strengthened in their view of the character of the evidence by the frank avowal of the *Counsel for the prosecution*—that, although he had much presumptive evidence to lay before the Jury, it was *not* of that conclusive character to lead him to expect a verdict;—also, by the *absence of all appearance of motive* on the part of the convicted man.’

So much, for the present, on the question of guilt:†—on that of punishment, supposing the guilt had been clearly established, our space compels us to be brief. We did not happen to see the article on this subject in the Brighton Paper to which our Contemporary alludes: we must therefore lay that out of the question altogether. The Ministerial Writer says, as to the crime—“ We hesitate not to say, that “ we deem it one of the most inexcusable and atrocious of “ all crimes; because it is one for which the natural reason “ of the most stupid of mankind can form no moral excuse.” It is difficult to find a *moral* excuse for any crime, as we understand crimes; and if the want of such excuse justified extermination, perhaps it would follow that all crimes ought to be punished with *death*; and the Code of DRACO, which

* The Foreman of the Jury, it will be observed, signed this Petition, which declares that the verdict was arrived at upon *presumptive evidence*.—ED.

† As to the question of this youth’s innocence of the crime for which he suffered death, the reader may refer to the note at page 41.

the Pagan people of Athens cast from them as an abomination, should be revived in this Christian country.

But to reasonable minds, that would wish to keep some proportion between guilt and punishment, it is not unimportant to consider that our legislators have confounded various degrees of guilt under the one term of "arson." Such persons will admit that the guilt, as well as the danger, of setting on fire an inhabited house, is much greater than that of burning a haystack in a field remote from human habitation. In France, and in America, the *distinction* is made. Is there a *higher value* set upon *life*, or a *less value* set upon *property*, in those countries than in England, that crimes punished here with *death*, should be visited there with *imprisonment* and hard labour for a certain period, or with a certain term of solitary confinement? But, though the blood of an Englishman is held far cheaper than that of a Frenchman, whoever compares the deeds of the "three days" of Paris with those of the three days of Bristol, or Nottingham, will admit that the people, who are subject to mild laws, have a much higher respect for the rights of property, than those who are accustomed to the dominion of laws that are ferocious and vindictive.

The Ministerial Journalist goes on to say, "the loss of a single barn or haystack may be a trifle; but the burnings of barns or haystacks, as a prevalent custom, even the logicians, who call forth these remarks, must deem an evil, which calls for the most severe and direct repression." If by severe and direct repression he meant some rationally coercive and corrective punishment, we acquiesce in the opinion; but we deny that an exterminating punishment is either rational or effective. It is certainly not rational to confound the burning of a haystack with murder: nor did Baron GURNEY confound it with murder; for he obtained a remission of his sentence for a man tried at the same Assizes, who belonged to the Coast Blockade, and who, having an altercation with his companion, deliberately drew his pistol,

and shot him dead. He was found guilty of murder on evidence that admitted of no doubt, and received a *commutation of his sentence*; while the lad who was convicted of burning a haystack, upon exceedingly doubtful evidence, *was hanged!* Of so much more value is a little *property* considered in this country than the *life of man*.

As to what our Contemporary says about taking a man's life, not precisely because he has burned a haystack, but to protect other haystacks from being burnt, it is only a repetition of Judge BULLER's argument in favour of hanging a man for horse-stealing:—"You are to be hanged," said that learned Judge, "not because you have stolen a horse, but "that horses *may not be stolen*." Whether this nice metaphysical distinction satisfied the doomed culprit of the justice of his sentence, the reporter of that specimen of judicial ingenuity does not say. We have some satisfaction, however, in knowing that our efforts were instrumental in abrogating the punishment of death for *horse-stealing*, as well as for several other crimes against property; and we think we may assure our Contemporary that, if there were fifteen Judge BULLERS upon the Bench, which there are not, all their "philosophic" admiration of judicial homicide would not be able much longer to make the offence for which *Wren* suffered, incur a forfeiture of life.

It requires nothing more to prove the ineffectiveness of this punishment than to call to mind the numbers that, within the last two years, have been sacrificed, whether guilty or innocent; and yet, according to the statement of our opponent, the crime of arson continues to be a *prevalent one*. We say there is no hope but it will continue to be prevalent, until *reforming* instead of *exterminating* punishments be resorted to, and until *remedial* measures be adopted, which will raise the peasantry of England out of their present state of wretchedness and destitution.—*Morning Herald, Thursday, January 17, 1833.*

*The same subject continued—Necessity of a COURT OF
CRIMINAL APPEAL.*

"It worries rich and comfortable persons to hear the "humanity of our penal laws called in question." Thus spoke a voice in the *Edinburgh Review* six years ago, which was at the time supposed to be that of a distinguished lawyer and politician, who now fills the highest judicial situation in the country.* Our Contemporary of the *Globe*, if we may speculate upon his object, from his expressed opinions upon Criminal Law, seems as well disposed as any body to save rich and comfortable people from that species of annoyance which the writer of the passage that we have quoted, so caustically describes.

Our Contemporary objects to our using the figurative expression, "a system that delights in examples of blood." We can't help it. We had in view the personification of our Penal Code as a sort of legislative *Baal*, to which nothing is so acceptable as human sacrifices. We said this system has its patrons.—He asks, where are they? We answer, they are *there*, wherever men are to be found who will adopt no other means of punishing the offence of burning a haystack, or a heap of straw, in a field remote from human habitation, than the infliction of the penalty annexed to the incalculably more malignant and dangerous crime of burning a family in their beds!

When we took up the case of the *Forgery Laws*, some years since, we used to be met by the conservative hostility of the admirers of the then exterminating system, who regarded the laws that confounded the forgery of a one-pound note with murder, as essential to the very existence of a commercial community. Indeed, at that time, the *hair* of those enlightened venerators of the executioner's "vested rights," used to stand on end, whenever it was proposed to

* Lord BROUGHAM.

lop off a single one of those hanging statutes which they considered as part and parcel of our "venerable and glorious Constitution!"—though, in reality, they are almost all innovations upon the more considerate and humane spirit of the ancient COMMON LAW.

Every body knows that by the *Shoplifting Act*, as it was commonly called, which was passed for the especial purpose of protecting shopkeepers against depredation, by putting every counter in London under the shadow of the impending gallows, it was made a crime punishable with death to raise goods from the counter to the value of five shillings! When ROMILLY's Bill to repeal that atrocious statute (itself a greater crime than the crime it went to punish,) found its way into the House of Lords, its reception was much the same as if it was suspected of merely serving as a wrapper for some of Guy Vaux's gunpowder, designed to blow up the Constitution! Lord ELLENBOROUGH was horrified at the audacity of such an attempt in the light of noonday; and as to the then Lord Chancellor ELDON, he scarcely felt the Woolstack safe from a conflagration, until the Bill was turned out of the House again! With prophetic horror he exclaimed, "If the present Bill be carried into effect, then may your Lordships expect to see the *whole frame of our Criminal Code* invaded and broken in upon:—the public of this country, I submit, ought, once for all, to know in what the Public Criminal Code of the country consists, that your Lordships may not, time after time, and year after year, be *distressed* with such discussions as the present." Precious Criminal Code, which, at one time, punished upwards of *two hundred* offences with death! But it was better that this sweeping system of DRACONIC murder should be put in constant operation, than that their Lordships—all "rich and comfortable persons"—should be "*distressed*" and "worried" by being called upon to devise some more rational, moral, and truly effective mode of coercing offenders, and preventing crime.

The reasoning, if such it can be called, at that era, against the repeal of the Shoplifting Act, and, since then, against the repeal of the Forgery Laws, is the same in principle as is now adopted by the writer in the *Globe* against the repeal of a law which confounds the lowest offence of arson with the highest, and makes the burning of a stack of hay or straw in a meadow, equal to the crime of deliberate murder. But the Shoplifting Act, and the laws against Forgery, which were passed as the only means of preventing "clandestine and contagious" offences against property, did not diminish those crimes—on the contrary, they rapidly increased. These laws are now repealed; and, strange to say, the retail trade of the shopkeeper, and the paper credit of the merchant, survive the shock! Our Contemporary may rest assured, that the law of "arson," as regards the inferior degrees of that crime, will also be rendered more consistent with the advanced state of our civilization; and he will find that hay-stacks and corn-stacks will not only not suffer a universal conflagration by the alteration of the law, but that they will be much better protected than at present.

As to the case of *Wren*, we had a right to assume his innocence; for, one of our arguments for not executing the sentence, was the prevalent doubt entertained of his guilt. We said, that, even if the punishment were a proper one, it ought not to be inflicted in cases of such serious doubt. Our Contemporary says, "We believe him to have been guilty, *because* he was so declared by a Jury* of our countrymen, obviously with the concurrence of the Judge, who left him for execution." Now, if these reasons are conclusive of guilt, and necessarily set that question at rest, why has the Constitution lodged a transcendent power of

* See extract from the Petition, (at p. 42,) which states that "the verdict was arrived at on *presumptive* evidence, and that of so slight a character, as to bring the case within &c."—which Petition was signed by the Foreman of the Jury.—ED.

revision in the Crown, which is exercised through the agency of the Secretary of State for the Home Department? Many an instance could we adduce of the Jury having pronounced a verdict of guilty, and the Judge having left the culprit for execution; and yet a doubt of guilt, excited by applications from other quarters, has caused the prerogative of the Crown to interpose its saving power. We have been instrumental to some of those exertions of the prerogative ourselves. One of the most recent, not to name others, was the case of *Robert Folkes*,* convicted of an atrocious crime at the Ely Assizes, and left for execution by the Judge, who told the Jury, in the most emphatic manner, that he perfectly concurred in the verdict. It was a worse crime than burning a haystack, yet he was an innocent man! We proved it in spite of the Judge's opinion.—He was rescued from the opening grave.

The evidence against *Wren* did, to our mind, and that of most people acquainted with it, establish only a case of suspicion. Let it be strong or weak, it was far from being a case where guilt was satisfactorily *proved*, any more than that of *Dyke* or *Jennings*, whose cases we noticed at the time,† and who were executed, for the crime of “arson,” under circumstances that excited very general doubt of their guilt. Executions that excite only public sympathy for the victims, are not calculated to make the laws respected.

These things, we say again, can only be guarded against by a regular, open, responsible COURT OF CRIMINAL APPEAL—and must lead eventually to its establishment.

But, passing over the question of individual guilt or innocence, our objection to the infliction of the punishment of death for the inferior degrees of arson, is construed by our opponent into a desire for the absolute *impunity* of offenders. This is a trick of sophistry which we think it hardly neces-

* *Ante*, Vol. I. p. 240.

† *Ante*, Vol. I. pp. 101, 148.

sary to refute ; yet we may just observe, that in our article of yesterday we expressly stated, that if he wished the *repression* of the crime by *rational and judicious punishments*, there was no dispute on that point between us. There are such punishments in use as *transportation for life*, or *imprisonment for years*, with the addition of *hard labour* or *solitary confinement*. "The worst use you can turn a man to," said HORNE TOOKE, "is to hang him." It is not impossible, as America has proved, to connect the punishment of crime with some *reparation to society*.—When the earth drinks his blood, revenge may be satisfied, but nothing else.

With respect to what our Contemporary says of *poaching and smuggling*, he ought to recollect that these are not considered by the law as being properly *crimes*, but that inferior species of offence called *misdemeanors*. If called crimes, however, they are distinguished from those that are *mala in se*, as being merely *mala prohibita* ; yet, if all considerations of *morality* and degrees of guilt be left out of the law, and *death* be considered the most *effective* punishment to prevent crime, there is no reason why the legislature should not punish *smuggling* and *poaching* with *death*, as well as burning stacks.

As to DR. PALEY's notions of *crimes* and *punishments*, we know them, and we also know the refutation of the Doctor's notions by the enlightened ROMILLY. PALEY, however, proved *too much* ; for he proved that the Criminal Code, in its *former most sanguinary state*, was just what it *ought to be*. But then he was [or rather, professed to be] a minister of the Gospel of mercy, who acknowledged that he "*could not afford to keep a conscience*."—*Morning Herald*, Friday, January 18, 1833.

The same subject continued.

In declaring his intention of abandoning the discussion of the *law of arson*, as connected with the case of *George Wren*, and of persons accused of similar offences, our Contemporary of the *Globe* attempts to give us, or rather the side of the question which we advocate, a sort of "run-away knock." He boldly affirms that the species of arson for which *Wren* suffered, is more mischievous and destructive than any other, when, as he expresses it, it is "adopted upon the principle and motives of existing incendiaries." We profess ourselves wholly unable to divine what those occult and mysterious motives are which make the burning of a farmer's haystack, in his meadow, a crime "more mischievous and destructive" than that of burning the farmer's house over his head, and consuming himself and his family in their beds!—In England both these crimes are punished alike. It is the only civilized country in Europe in which a distinction is not made in favour of the sacredness of life. Our opponent has discovered a motive for this, which he wisely keeps to himself. It is well for him that the laws against witchcraft have been repealed, which made the possession of any *occult* knowledge as penal an offence as burning down a village.

Our opponent refers to Ireland: so shall we. In that country, some years ago, was enacted the horrible tragedy of burning the family of the *Sheas* alive! We forget the number of persons that were reduced to ashes amid the frantic yells of their destroyers. Human nature shudders at the crime; yet had the perpetrators of this hideous and almost incredible enormity confined their passion for revenge to only burning down a haystack of the *Sheas*, in a place where no human life could have been endangered, the just, wise, humane, and discriminating law of England would have subjected them to *the same punishment*. What a lesson in morals to teach the people! But then there are *motives*

which render the burning of a haystack even a "more destructive" crime than devoting the owner's homestead to all the horrors of a midnight conflagration. We leave a proposition so absurd to the common sense of mankind.

We know of no motive for arson but revenge or malice, except in cases where persons burn down their own property for a fraudulent purpose. Revenge and malice are, indeed, bad motives, which we do not attempt to justify; but the man who limits the exercise of his revenge to the destruction of some property, is far less criminal than he who, through the same motive, imbrues his hands in blood. This is too self-evident to be made clearer by argument. The English law errs as much in policy as in principle—in wisdom as in humanity, by confounding the two. The writer in the *Globe* clings to the punishment of death as the *most effective* one for all varieties of arson; although the result of the numerous executions of the last two or three years proves that it is quite the reverse. During that period the numbers of persons who have perished for this offence on the scaffold—some on conclusive, but many more on doubtful, evidence—would have suppressed, or nearly suppressed, the crime, if death were an effective punishment.

But what is the result of the sanguinary experiment? Our opponent admits that the burning of property is still a *prevalent custom*. So it unhappily is. The machinery which the hangman works, may cut off, annually, hundreds of those whose guilt is proved, or only suspected, but cannot *extirpate its cause*. That can only be done by moderate punishments, proportioned to the offence, and by such *remedial* legislation as will raise the peasantry of England above the oppression and privations which they now suffer; and which will restore those sentiments of respect and affection for their superiors, which bitter and hopeless suffering has supplanted by sullenness and revenge.

Well did Mr. MARSH say at a political dinner at New-

bury, the other day, in allusion to the crimes of which we are now speaking—

‘I cannot suppose that they arise from any innate viciousness in an Englishman’s heart—I cannot suppose that they arise from any change in the national character; but, though I know not their cause—though I cannot discern the why and wherefore, I still feel that something must be done to bring the master and the servant, the employer and the employed, into good humour with each other. We must take away the *heart-burnings* which exist between them, and then we shall get rid of the unfortunate *rick-burnings*.’

But though numbers perish for the offence of arson, and some of them innocent, yet the punishment of *death* produces *total impunity for many, who are really guilty*, and who, if the punishment were not so vindictive, and so revolting to human feelings, could not so escape. Many have been the acquittals of men charged with that offence, on evidence much stronger than that brought against *Wren*. Humane prosecutors rather put up with the loss, than pursue the delinquent to the scaffold. Considerate Juries often strain their deductions from the evidence *in favorem vitæ*, in cases where, but for the inevitable sacrifice of life, they would be satisfied with the proof. Thus is the punishment of *death* often a premium on crime, and a pledge of impunity.

Grand Juries, too, sometimes stop cases of this sort *in limine*, which they would otherwise send to trial. We recollect that, at the Spring Assizes of Cambridge last year, there were *four* indictments for arson presented to the Grand Jury, every one of which they threw out. In Norfolk there were also *four* bills for the same offence preferred—*three* of them were thrown out: on the fourth, the prisoner was tried and *acquitted*. Among those *eight* some guilty men must have escaped; and merely because men of humane feelings will have a bias, in spite of every other consideration, to save life from the exterminating severity of the law. The true principle was laid down by BECCARIA, when he said—

"It is not the severity, but the *certainly* of punishment "that deters from crime." Our object is, by rendering punishments less revolting to the humane instincts and moral compunctions of our nature, to make their application more certain and uniform.

When men were hung up by dozens for forging one pound Bank of England notes, the crime did not diminish—it increased ;—though many were cut off at every Old Bailey Sessions, many escaped all punishment, through the humane repugnance of Juries to send them in shoals to the scaffold.* At last the machinery of extermination was stopped, by Juries refusing to minister any longer to the senseless waste of blood. It is far from being the only instance in which public opinion has paralyzed intemperate laws.

As to the particular case of *Wren*, no conceivable motive could be alleged for the offence, inasmuch as there was no proof whatever that he entertained any malice against the prosecutor. This was a strong fact in presumption of innocence, where the case was in other respects so very slight. His being present, assisting to put out the fire, we should think, might well account for the footmarks which his shoes were said to fit near the stack, and which was indeed the only thing like proof against him. The unfortunate man, when on the scaffold, warned the labourers who heard him, not to go near burning stacks to put them out, lest the prints of their feet might be used as evidence to bring them to the fate he was then about to suffer.

We stated our astonishment at a *murderer* having received a commutation of his sentence, while mercy was refused to a man doubtfully convicted of burning a stack of hay. The writer in the *Globe* said there had been an affray :—No such thing ; we looked back to the *Brighton Guardian*, and

* See the evidence of Mr. Alderman *HARMER* given in the Note, page 14 of our First Volume.—ED.

subjoin the following remarks upon that subject extracted from it:—

‘ Both the recommendation of the Jury, and the earnest supplication of honest and sincere men, were disregarded ; the stern sentence of Death by the hand of man, for a supposed offence against property, was executed on poor *George Wren*, while mercy was extended to another convict, *Timothy Harrington*, tried at the same gaol delivery, who deliberately shot his comrade dead on the spot at *Nimfield*, in this county ; and, on being remonstrated with, was preparing to shoot another, when he was seized and disarmed. This monster, whose guilt is certain—about whose crime, *destructive of human life*, there is no doubt—this monster escapes from death, while on the poor lad of nineteen, convicted on “ presumptive ” evidence only, of an offence against property, transportation for life was thought too lenient a punishment to be inflicted ! — — — ! What an agony of thought does this contrast inflict on the sensitive mind ! — We cannot repress the exclamation, “ Is this justice ! ”

Morning Herald, Saturday, January 19, 1833.

Case of Michael McCabe, sentenced to death for street robbery in Glasgow.—The Standard Newspaper advocates the cause of rational justice.

In the *Standard*, a Paper which, though of Conservative principles, has ably and honourably distinguished itself in advocating the amelioration of our sanguinary Criminal Code, there appeared on Tuesday evening the following paragraph:—

‘ We call the attention of our readers to the case of *Michael McCabe*, found guilty of taking a handkerchief from a person in the streets of Glasgow, who had been knocked down by some of *McCabe’s* associates. For this crime the man is sentenced to be hanged. We thought that the day for such disproportionate punishments had passed.’

In another part of our columns will be found a brief statement of the case, also copied from the *Standard*. Any

person who reads that statement (which, upon enquiry, we have ascertained, from good authority, to be perfectly correct), and considers the offence, under the circumstances there set forth, to be one for which the life of the offender ought to be sacrificed, must have a heart enamoured of tragic exhibitions to an extent that the study of Draco's legislative labours could scarcely improve.

Is it possible that Mr. COCKBURN,* the [Scottish] Whig Solicitor-General, *the friend of* Lord BROUGHAM, and the Lord Advocate JEFFREY,—himself (as well as the two last-mentioned distinguished personages) a writer, formerly, in the *Edinburgh Review*, against the sanguinary principles of our penal code—is it possible, we ask, that such a man can have insisted upon the execution of the *capital* sentence in a case, though of robbery from the person, where the property taken was so trifling—where no serious personal injury was inflicted—where the offender neither used nor carried any mortal, any dangerous, weapon—where he carried no weapon whatever, nor even a stick!—in a case, too, where the Jury were *not unanimous*, and where the verdict is, consequently, only that of the majority, which would have amounted to an *acquittal* on this side the Tweed!

For a robbery under such circumstances, though the guilt were fully proved, no *English* Judge would at this time of day venture to carry the sentence into effect, although grounded on a verdict which must be unanimous. It is lamentable to think that the intervention of a stream between two portions of this Island should cause a distinction in the punishment of crime, equivalent to the difference between *life* and *death*. We are aware that, by the letter of the law, the same punishment could be inflicted for the same offence in England; but it never is inflicted now-a-days, unless when committed under circumstances of aggravation, which do not belong to the crime of *McCabe*. Since, however,

* Mr. COCKBURN, soon afterward Lord COCKBURN, by being created a Lord of Session.

the accession of liberal men to office, a culprit, named *Gilchrist*, was executed,* we believe at Glasgow, for a theft which, in this part of the Island, could only be punished as simple larceny—that is, by imprisonment or transportation. Why should those sanguinary anomalies disgrace Scotland, proud as she is of the moral and intellectual station which she maintains among the civilized nations of the nineteenth century?

The petition sent up to His Majesty from Edinburgh, and signed by such men as the Hon. David ERSKINE, Dr. GREVILLE, Mr. SIMPSON, the Advocate, Mr. COMBE, Writer to the Signet, and others of high character, intelligence, and respectability, states that “*public feeling* would be *outraged* by the infliction of a punishment so disproportionate to the offence committed.” Again, the petitioners, after stating that they had hailed, with the greatest satisfaction, the measures adopted during the last Session of Parliament for ameliorating a part of the Criminal Code, and were much mortified that, in opposition to the sentiments then expressed, a case like the present should have occurred, go on to make the following correct and emphatic declaration :—

‘ Your petitioners are quite satisfied that the execution of the sentence pronounced on this young man, instead of maintaining the honour of the law, and the well-being of society, would excite a revolt of the moral feeling among the people, and thus tend to frustrate the very object it was meant to promote.’

Here reason pleads more strongly to the Throne for mercy than even the sentiment of humanity.†—*Morning Herald, Thursday, February 7, 1833.*

* This execution appears to have been one of that class referred to in the Notes at pp. 275 and 118 of our First Vol. See Index of that Vol., article “*Experimental Executions.*”—ED.

† *Michael McCabe* was afterwards reprieved.

*Presentation, in the Commons, of the Petition agreed to at the
GREAT MEETING, Exeter Hall.*

In the House of Commons, last night, Mr. HUMPHREYS presented the Petition from the Metropolis, adopted at the Exeter Hall Meeting in June last,* and since signed by several thousand persons, for an amelioration of the criminal laws. He strongly supported the Petition, maintaining that the mitigation of those sanguinary laws would *increase* the security of property, and check crime, by making the execution of the laws more certain. He urged the policy of repealing all capital punishments, except for murder, treason, and arson.† Mr. PEASE spoke, amongst others, in favour of the prayer of the Petition, stating that the character of the country, its reputation for civilization and Christian feeling, loudly called on the Legislature to remove from our Statute-book the stain of such laws. [A copy of the Petition will be found at page 112.]—*Morning Herald, Wednesday, February 27, 1833.*

* See Vol. i. p. 291, *et seq.*

† On this occasion it was that Sir John CAMPBELL, as one of the Law Officers of the Crown, wishing probably to assist the views of an Administration under which he served, made a statement in Parliament so extraordinary as to be afterward remarked upon, out of doors, by Honourable Members who had sat near him. He alleged that the *only* crime connected with a dwelling-house, punishable with *death*, was *Burglary*. He was interrupted by an Honourable Member, but, refusing to be corrected, he repeated the statement. Yet at that moment, not only was another offence.—*Housebreaking with Larceny*,—still capital, but, in England alone, 583 persons had been *condemned* for it in the preceding year. *Robbery* in a dwelling was also capital, as it still continues to be. Soon afterward, in the same Session, a Bill was brought in by Mr. LENNARD to repeal the capital penalty for both these crimes, (p. 91,) upon which occasion, the same Sir John CAMPBELL resisted its passing, unless it were exclusively confined to the first! (p. 105.) It is not easy for us to ascribe this conduct to ignorance, or carelessness, in a Law-Officer of the Crown, who is known to be a Lawyer distinguished for his acuteness and ability.—ED.—See Note, p. 78.

Case of two men, convicted capitally at Bedford, for an offence connected with night-poaching.

On returning a verdict in a capital case the other day at Bedford, the Jury, who found the two prisoners guilty of a crime for which their lives were forfeited to our vindictive laws, added a recommendation to mercy ; whereupon Mr. Baron BOLLAND said, "To a recommendation to mercy, coming from a Jury, I always attend." This statement, and the practice founded upon it, do honour to the learned Judge. To adopt such a rule of proceeding bespeaks a mind equally humane and enlightened.

As to the particular case which elicited this declaration, we are quite sure Baron BOLLAND would have reported it as a fit one for the clemency of the Crown, even if there had been no recommendation to mercy ; and if there had been no point of law, as there happens to be, reserved in the prisoners' favour. It was a case of four poachers, tried, under Lord LANSDOWNE's Act, of cutting a gamekeeper, with intent to murder, or to do him some grievous bodily harm. The poachers had not been found on the manor of the gamekeeper's employer, or upon any manor, though there was strong reason to suspect they had been a short time before shooting in the plantation of a neighbouring gentleman, whose gamekeepers, if they had found them there, might legally have seized and disarmed them ; but the gamekeepers of neither one nor the other manor had a right to stop them on the King's highway, as the prisoners were stopped ; much less had one of them a right to lay hold of the gun of the poacher in that place, and which act of personal trespass—for it was so—brought about the conflict through which the prosecutor, who was the brother of the man that caught hold of the gun, suffered severely, and received the wound in the leg, which, it was thought, in a Christian country, ought to be atoned for by *the lives of four men*, sacrificed by the instrumentality of Lord LANSDOWNE's law—a professedly *reformed* edition of Lord ELLENBOROUGH's extermin-

ating statute,—which *confounds degrees of guilt* in a manner that sets all proportionate punishment at defiance.

Leaving this case out of the question, and looking at the abstract rule laid down by Baron BOLLAND for the guidance of his own judicial conduct relative to recommendations to mercy by Juries, we cannot but express our regret that so wise and salutary a rule of practice is not adopted by the Judges universally. Some Legislators and Judges are apt to become indignant, when they hear laws described as vindictive which take human life even for offences much inferior to that of murder. They attempt to justify such laws on the plea that they take life, not for revenge or compensation, but in the way of example. Now, we ask, what salutary influence can an example of capital punishment have, against which the opinion of the country is expressed? Can it have any other influence than to excite public sympathy for the offender, and public indignation against the law?

When a prisoner is put upon his trial by Jury, he is said, in the language of the law, to be tried by his country, “which country the Jury is;” for twelve *probi et legales homines*, indifferently chosen from among his peers, are presumed to represent, by their verdict, what the decision of the *whole country* would be, if the whole country could sit in judgment on his case in the Jury-box. Now, if the verdict of the Jury be taken as the opinion of the country, why should not a “recommendation to mercy” by the Jury be also taken as the opinion of the country, and acted upon accordingly? Some Judges do not hesitate to reject such a recommendation, at times, with little ceremony. In such cases the capital punishment serves no purpose but to *bring the law into odium*. If the Judges uniformly acted on the principle laid down by Baron BOLLAND, it would be well; if not, we should like to see a law passed that would prevent the sentence of *death* from being inflicted, whenever a Jury recommended to mercy.—*Morning Herald, Saturday, March 9, 1833.*

Case of Westnott and Carter, sentenced to death at Cambridge, for an offence connected with night-poaching.

When Lord ALTHORP'S Bill for the reform of the Game Laws first made its appearance, we criticized it freely, and, as experience now proves, with truth. We shewed that it was a mock reform, from which no substantial practical advantages could be derived; and we confidently trusted, for the confirmation of our opinion, to the *working* of the Bill. It has now worked for some time, and every criminal calendar at the various Assizes affords melancholy proof of the accuracy of our anticipation.

The cases arising out of night-poaching, and the deadly conflicts which occur between the invaders of preserves and gamekeepers, still supply a considerable portion of the business of the Criminal Courts on circuit, and are among the most disgusting drudgery, connected with the proceedings of penal law, which Judges and Juries have to perform.

If severity of enactment could put down night-poaching, surely a law which, for the offence of being found in any field, or close, or other place, armed either with guns or bludgeons, to the number of three or more, with the intent to take or destroy game, inflicts *fourteen years* transportation on the person so found, although no act be done, ought to be effectual;—but it is not—it is a total failure; and this, although no law is carried into effect either at Assize Courts or Quarter Sessions, but more especially the latter, with greater rigour. There are Magistrates, who can shew more tender sympathies for a murderer, than for one who shoots a pheasant, or a hare.

Two men, named *Carter* and *Westnott*, now lie under sentence of death in Cambridge gaol, for shooting at and wounding a gamekeeper, while poaching in a preserve of Lord HARDWICKE. There were three men convicted on the indictment. It was not clearly proved which of them was the person that really wounded the gamekeeper, and the

Jury recommended them all to mercy—thereby meaning that, in their opinion, which should be taken as the opinion of the country, *transportation for life* would satisfy the ends of justice better than shedding the blood of the offenders. The learned Judge, Mr. Baron BOLLAND, did not pass sentence at the time of conviction ; but, in consequence of the recommendation to mercy, said he would take time to consider of it. At the termination of the Assizes he had them placed at the bar ; and it certainly excited some surprise, when it was found that it was for the purpose of passing sentence of *death* upon two of them, who now await their execution, unless the clemency of the Crown interposes, and prevents the revolting sacrifice of life to laws which have shed already but too much human blood. The surprise has not been diminished since it has been ascertained that Lord HARDWICKE* expressed a desire that their lives might be spared, previously to the sentence being passed.

Baron BOLLAND, than whom there is not on the Bench a more upright or humane Judge, said, upon a former occasion, that he “always attended to a recommendation to mercy from a Jury.”† What can have induced him to depart from so sound and merciful a rule, in the present instance, we cannot conceive. It serves to shew, however, that the system, as long as it exists, will have its victims. Such sanguinary examples will only increase the disgust for the *Game Laws*, which is very generally felt as a fertile source of rural crime and misery, and thus facilitate their abolition. —*Morning Herald, Saturday, March 23, 1833.*

The same case continued—“*Beer Shops*” the means of leading these men into the crime, for which their lives were taken.

In giving an account of the wretched fate of *Carter* and *Westnott*, two [married] young men, who were executed the

* The late Lord HARDWICKE.—ED.

† See pages 61–62.

other day at Cambridge, for wounding a gamekeeper of the Earl of HARDWICKE, when engaged in night-poaching, the *Cambridge Chronicle* says—

‘The injurious tendency of *beer-shops* seemed to be deeply impressed upon the minds of the culprits; and, in speaking of them, they stated that many young men spent nearly all their wages in them, and, when intoxicated, planned robberies and depredations that would otherwise not have been thought of.’—

This is only another of the melancholy proofs which the Assizes constantly afford, of the pestilent effects of those dens of dissipation which the authors of the Beer Bill inflicted on the country, under the pretence of affording relief to the labouring classes.

A Government that neglects to educate a people in their duties, shares, at least, the moral responsibility of their crimes. But, what shall we say of a Government that first takes measures that inevitably tend to demoralize the people, and then is not satisfied with any punishment short of the extermination of the ignorant beings that fall into the snares of crime which evil legislation has every where spread at their feet? Such ought not to be the characteristic of any Government that exists upon the surface of the earth.

This splendid and most liberal measure of relief for the labouring poor [the Beer Bill] occupied the British Parliament during the greater part of a long Session. All the mischief which that Bill has effected we forewarned the Government of, day after day, as our recorded opinions at that period will shew. It was in vain we referred to the experience of former times, to shew that the limitation of alehouses was adopted from necessity, and as a matter of police. It was in vain we put it to the Government that, in altering the licensing system, they should still adhere to the sound and salutary principles of the statute of Edward the Sixth, and allow no house for the sale of intoxicating beverage to be opened, which was not proved to be *necessary* for the public accommodation, and the keeper of which could not

furnish *competent testimonials* of character. It was in vain we entreated, that, if Government were resolved to dispense with those precautionary regulations, a clause should be inserted in the Bill, providing against the beer purchased at such houses being *consumed on the premises*. The Government, hurried away by the cheers of persons calling themselves "free-traders," and seeking a bastard popularity at the expence of public morals, carried that Bill in all its naked deformity, which, in a country already overstocked with vents for intoxicating liquors, opened 30,000 new manufactories of drunkards, to assist the march of demoralization.

Sir Robert PEEL, too, had undertaken the reform of the criminal law, which he left, as he was compelled to admit, still "the most sanguinary of any in Europe." This favourite Beer Bill seems as well calculated as if it had been so designed, to prevent that sanguinary law from ever wanting victims. To relieve the labouring classes, the malt and hop duties should have been repealed. That would have enabled the peasant to enjoy a nutritious beverage by his own fire-side in the midst of his family, away from evil association. But our Statesmen were, apparently, less sensitive about the increase of crime than the diminution of the taxes.

In alluding to the disgusting exhibition which has given rise to these remarks, the *Cambridge Chronicle* also says—

'Soon after the execution, a pickpocket was detected. The horrible spectacle (the execution) seemed to have little effect on a portion of the spectators, who almost immediately crowded round some boys who were fighting in the Castle grounds.'

Now Judges invariably disclaim the hanging of culprits for revenge. They say it is done merely in the way of example. We say, and experience bears us out in it, that the example is only *brutalizing* to the multitude. It is no uncommon thing for pickpockets to follow their avocation under the gallows, with its human burden struggling in the agonies of death. *We exterminate, because we will not take the trouble to reform.*—*Morning Herald, Tuesday, April 9, 1833.*

Humane Address of Mr. Baron BAYLEY to the Grand Jury of Flintshire, touching the preservation of Game, as a source of crime.

The judicious and humane advice which Mr. Baron BAYLEY gave the gentlemen of landed property in Flintshire, touching the mischievous practice of preserving vast quantities of game, and thereby increasing the temptation to poaching among the peasantry, does great honour to his head and heart. We hope that advice will not be without its proper influence upon the minds of those to whom it was addressed. The practice which the learned Judge reprobates as a productive source of crime, is unfortunately not confined to Flintshire. Similar sentiments to those which his Lordship uttered on the occasion alluded to, might with great propriety be addressed to the gentlemen of the Grand Jury, and others of landed wealth, at the Assizes for every county in the kingdom.*

We stated the other day that Lord ALTHORP'S Act, which was introduced to Parliament with all the pomp and ceremony of a *reformed* measure of game legislation, and was to work wonders in the prevention of poaching, has done no good at all, or rather has had an opposite effect. The

* If the *Bury Post* be correct in its information, relative to an alleged arrangement of Sir Henry BUNBURY with his tenantry respecting *Game*, it would be well for the morals of the people, and the interests of humanity, were the example which the worthy Baronet has given to the country gentlemen of England, to meet with extensive imitation. We copied a paragraph from that Paper, which states, that the arrangement is for each occupier to provide his landlord with a certain quantity of game during the season, being himself at liberty to kill what he pleases for his own use; and, that "the worthy Baronet" has relinquished the expensive, fruitless, and crime-exciting system "of preserving." It is said that the MARQUIS OF BRISTOL has it in "contemplation to adopt a similar plan."—*Morning Herald, Monday, April 16, 1832.*

calendars at most of the late Assizes have shewn an increase of the offences connected with the violation of the game laws.

On the recent Norfolk Circuit, Baron VAUGHAN declared that he had never known so many cases of the offence of armed poaching by night, and the charges of more serious crimes arising out of that practice. In fact, the rural warfare between poachers and gamekeepers, with fire-arms or other deadly weapons, is waged with more fierceness and desperation than ever. Those conflicts are stained with the blood of many victims, who fall either by the hand of brutal violence, or the sword of the sanguinary law.

Most of the trials and capital condemnations for "cutting and maiming," under Lord LANSDOWNE's Act, which is but an extension of the merciless provisions of that law to which Lord ELLENBOROUGH gave his name, arise out of conflicts about game. The game laws authorize the gamekeepers and their assistants to apprehend all persons poaching in preserves. The poachers generally go in bodies into the preserve, that they may be the better able to intimidate the gamekeepers, and prevent such apprehension. If a gamekeeper be wounded in the attempt to seize the delinquent invaders of the cover, or if, making a sudden attack, without even calling upon the party to surrender, he receives a cut or severe blow from either a sharp or blunt weapon, he indicts one or all of the poachers under Lord LANSDOWNE's Act, the 9th Geo. IV., for the *capital* offence. The poachers are tried under great disadvantages; for as it is usual to indict all that are apprehended, although the offence may be but the sudden act of one, the poachers, it is clear, *can call no witnesses*. If, therefore, a gamekeeper used wanton violence in the first instance, and thereby justified resistance, how are the poachers to prove that? The evidence of the prosecutor is supported by all the other gamekeepers or assistants who may have been present. They may swear falsely, or they may swear mistakingly; but there is no witness to refute them. This consideration alone, if there were no other,

ought to make Juries cautious how they convict in such cases, and ought to make Judges cautious how they carry the extreme sentence of the law into execution.

We have a hope, however, that the severity with which the law has been carried into effect, which punishes even a slight wound received by a gamekeeper in one of those casual encounters, like an act of deliberate murder, will lead to its abolition. This is one of the statutes which give to the law of England a more sanguinary character than is possessed by that of any country in Europe. The game laws prepare the victims for Lord LANSDOWNE'S Act to immolate.

We would say to the preservers of game, in the words of Baron BAYLEY—a Judge whose learning and virtues shed lustre on his station—we

—‘could wish that gentlemen of property and influence would consider whether they were making the best use of the blessings and favours which Providence had intrusted to their care, by accumulating game in such quantities upon their land, as to afford an almost irresistible temptation to the lower orders for the commission of crime.’

We ask, what is there in the pastime which pheasants and hares afford, that ought to cause rational beings to set a higher value upon it than on the morals, and even the lives of their fellow-creatures? Fearful is the responsibility that men, on whom the gifts of Fortune are showered, incur, who would rather have their preserves well stocked with game, though the gallows throw its gloom over every cover, than have a happy and contented peasantry around them.

We are quite sure that those persons could have no claim to be respected, either for moral worth or understanding, if there were any such to whom Baron BAYLEY spoke in vain, when he told them, that he

—‘was aware it would be a great sacrifice on the part of many gentlemen to reduce their game; but he must submit to their consideration the important benefits which might accrue to the country, if a less quantity were reared upon their land. He really thought the amazing profusion of game which was known to exist, a great inducement to

‘successful poaching among ignorant and thoughtless youths, who too often terminated a career thus commenced, by the commission of a much graver offence.’

His Lordship, no doubt, meant the offence, so prevalent of late, of resisting and wounding the gamekeepers, for which, under the exterminating provisions of Lord LANSDOWNE'S Act, so many of these “ignorant and thoughtless youths” have perished on the scaffold.

This rural temptation to crime is unknown in the neighbouring kingdom of France; nor is Spain, bad as its political system is, afflicted with the tyranny of such a system as that of the English game laws. In those countries the game is plentiful; but the pleasure of sporting is not purchased at the cost of human blood.—*English Chronicle, Saturday, April 6, 1833.*

Mr. EWART'S *Bill, to allow persons accused of felony to make their full defence by Counsel.*

Mr. EWART'S motion for a Bill to allow Counsel to address the Jury for prisoners in cases of felony,* stands for to-day. It is a great disgrace to the criminal law of

* We can hardly refrain from noticing, in the outset of Mr. EWART'S Bill, the judicious and decisive course taken by a contemporary Journal, *The Standard*, which upon many occasions has promoted the measures for ameliorating the criminal law by its invaluable support. That Journal contained, the next day, the following remarks.—ED.

‘Mr. EWART'S proposition to give to persons accused of felony the benefit of a defence by Counsel, has our warmest approbation. We have never heard of an argument against this improvement, which did not result in one or other of the opinions—that *justice* is not the object of criminal trials, or, that *perfect justice*, where *men's lives* are concerned, is *not worth the pursuit*.

‘We are told, on one side, that, to give a person accused of felony the aid of Counsel, is to place him in a *worse* condition. No doubt it is—if he be *guilty*; but surely not—if he be *innocent*. To

England, not in point of humanity, but of impartial justice, that while the Counsel for the prosecution, in cases of felony, whether they affect human life or not, can make a speech to the Jury, and give such a colouring to the facts as may be most favourable for a conviction, the Counsel for the prisoner is not allowed to open his mouth, to refute sophistry, to explain doubtful facts, or to counteract the effect of eloquence, or elaborate ingenuity, exercised, it may be, not to enlighten, but to mislead the understandings of Jurymen,

‘place the guilty, however, in a worse position, is the very end of criminal jurisprudence. It is not, we presume, the business of the legislature to preserve anomalies, on the ground that they will aid in defeating justice. We are persuaded that many *guilty* persons are acquitted, merely because the ingenious humanity of the Jury and Bench surmise defences for them, which could not stand a moment, if offered by Counsel.

‘Even if the business of the Criminal Courts should be increased, that ought to be no objection. The sense of the Pagan dramatist could discover, that, when the *life of a fellow-creature* is concerned, no delay can be too long ;—and shall Christians set a less price upon the blood of their brethren ? But we very much doubt that the business of a Criminal Court would, in fact, be increased by the change suggested : we are convinced that pleas of Guilty would be greatly multiplied, when culprits should be stripped of that compulsory silence, which is the only *feasible* defence of a bad cause ; and, at all events, the second and third trials of criminals with closed doors, which our present system renders necessary, might, in most cases, be dispensed with.—But the matter is of too much importance to be disposed of in a single paragraph.’—*Standard*, March 29, 1833.

The following observations are from an article (which appeared shortly after Mr. LAMB introduced the subject into Parliament,) in the *Edinburgh Review*, attributed to Mr. BROUGHAM’s pen.

‘The particular improvement of allowing Counsel to those who are accused of felony, is so far from being unnecessary, from any extraordinary indulgence shewn to English prisoners, that we really cannot help suspecting, that *not a year elapses in which many innocent persons* are not found guilty. How is it possible, indeed, it can be otherwise ? * * * * * That there are many innocent men punished every year, for crimes they have not com-

and to entrap them into a verdict which unperverted reason would not warrant.

It is now about seven years since Mr. LAMB* unsuccessfully moved for leave to introduce a Bill similar to that which is the object of Mr. EWART's motion. Circumstances have greatly changed since that time; but the principles of justice are immutable. Mr. LAMB has, however, shewn no inclination since he has come into office, to advocate that principle

'mitted, appears to us extremely probable. It is indeed scarcely 'possible it should be otherwise: and, as if to prove the fact, every 'now and then a case of this kind is detected. Some circumstances 'come to light *between sentence and execution*, [and sometimes *after* 'execution, the writer might have added,] immense exertions are 'made by humane men, time is gained, and the innocence of the 'condemned person completely established. In *Elizabeth Canning's* 'case, two women were capitally convicted, ordered for execution— 'and at last found innocent, and respited. Such, too, was the case of 'the men who were sentenced ten years ago, for the robbery of Lord 'Cowper's steward. "I have myself (says Mr. SCARLETT) *often* 'seen persons I thought innocent convicted, and the guilty escape, 'for want of some acute and intelligent Counsel to shew *the bearings* 'of the different circumstances on the conduct and situation of the 'prisoner." (*House of Commons Debates, April 25, 1826.*) We 'were delighted to see, in this last debate, both Mr. BROUGHAM 'and Mr. SCARLETT† profess themselves friendly to Mr. LAMB's 'motion.'—*Edinburgh Review, Dec. 1826.*—(No. 89, p. 78.)

* It was on the 6th of April, 1824, that Mr. LAMB presented, in the House of Commons, from Inhabitants of London serving on Juries at the Old Bailey, the Petition, of which the subjoined is an extract:—

'Your Petitioners, fully sensible of the invaluable privilege of 'Jury trials, and desirous of seeing them as complete as human institutions will admit, feel it their duty to draw the attention of the House 'to the restrictions imposed on the prisoner's Counsel, which, they 'humbly conceive, have strong claims to a legislative remedy. With 'every disposition to decide justly, the petitioners have found by 'experience, in the course of their attendance as Jurymen at the Old

† Afterward, Lord ABINGER.

of justice with regard to the defence of prisoners charged with felony, which he contended for when he had only public opinion to support him against adverse Ministerial power, with its overwhelming majorities.

Does Mr. LAMB despair of success because himself and his friends are in power? Or, does he consider a reformed House of Commons to be less likely to be influenced by the arguments of justice and reason, than the unreformed House in which he formerly brought this question forward? Surely, if he mooted the question formerly, not for party purposes, but through a sincere regard for the real interests of justice, he ought not now to be afraid or ashamed to ask his friends in power to concede that improvement of the law, which he demanded from his political adversaries.

We have seen a short essay upon "The defence of prisoners by Counsel," which has just been published, and which contains some sensible and judicious observations; but the writer labours under the mistake that prisoners in treason, as well as other criminal cases, are under the same disadvantages as in cases of felony. Now the fact is,

'Bailey, that the opening statements for the prosecution too frequently
'leave an impression more unfavourable to the prisoner at the bar,
'than the evidence of itself could have produced; and it has always
'sounded harsh to the petitioners to hear it announced from the Bench,
'that the Counsel to whom the prisoner has committed his defence, can-
'not be permitted to address the Jury in his behalf, or reply to the charges
'which have, or have not, been substantiated by the witnesses. The
'Petitioners have felt their situation peculiarly painful and embarrassing
'when the prisoner's faculties, perhaps surprised by such an intima-
'tion, are too much absorbed in the difficulties of his unhappy circum-
'stances, to admit of an effort toward his own justification against the
'statements of the prosecutor's Counsel, often unintentionally aggra-
'vated through zeal or misconception; and it is purely with a view
'to the attainment of impartial justice, that the Petitioners humbly
'submit to the consideration of the House, the expediency of allowing
'every accused person the full benefit of Counsel, as in cases of mis-
'demeanor, and according to the practice of the Civil Courts.'

that, both in *treason* and *misdemeanor*, the Counsel for the prisoner is allowed to address the Jury. This shews that the refusal of the same mode of defence in felony is an anomaly, as well as an injustice. But it is an anomaly which, we hope, will soon cease to disgrace the law of England.—*Morning Herald, Thursday, March 28, 1833.*

MR. EWART'S *Prisoners' Counsel Bill, continued.*

The Bill brought into the House of Commons by Mr. EWART, and read a first time, allowing persons charged with felony to make their defence by Counsel, has been printed.

The preamble states, "Whereas it is just and reasonable that persons accused of offences against the law, should be enabled to make their full answer and defence to all that is alleged against them;" and the enacting clause goes on to say, "Be it therefore enacted, &c., that from and after the passing of this Act, on all trials for felony, whensoever any Counsel learned in the law, being then of Counsel for the prosecution of such felony, shall have called his witnesses on the matters of fact, in furtherance of such prosecution, the person or persons so prosecuted shall be admitted to make his, her, or their answer and defence thereto, and to state his, her, or their case by Counsel learned in the law, any law, custom, or practice to the contrary notwithstanding."

The very description of a Bill to allow a prisoner to make a "full defence" to the charges brought against him, is a sufficient reason for the enactment of such a measure. Not to permit a prisoner to make a *full defence*, or, in other words, to oblige him to make an imperfect defence, while the accusation is pressed against him with all the aid of eloquent statement and legal ingenuity, is such gross and flagrant injustice, that the continuance of the practice in this country to the present time, can only be accounted for on the principle, that there is nothing so monstrous or absurd in the

institutions of society but long habit can reconcile the human mind to it.

But the "impartial and humane" arrangement which denies the Counsel for the prisoner, the power of making any explanatory statement in answer to the colouring given to facts by the speech of the prosecutor's Counsel, does not exist in cases of *treason*—the highest crime known to the law, nor in *misdeemeanor*—the lowest. But by far the most numerous class of cases are felonies; and, consequently, in the greater number of the criminal cases tried in our Courts, both at Assizes and Sessions, the prisoner is not yet allowed, by the just, and humane, and impartial law of England, to make a *full* answer and defence, to rebut the charge brought against him.

To make up for this deficiency, the ridiculous fiction * is resorted to of the "Judge being Counsel for the prisoner." The situation of a Judge is, or at least ought to be, incompatible with his being Counsel for one side or the other.

The proper duty of a Judge is to hold the balance of justice equal between the accuser and the accused; and, at the present day, we have pleasure in giving our testimony to the general uprightness and impartiality of the regular Judges of the land. There may be an individual exception or two; but we speak of the general character of the Bench, which was never more pure than it is at present.

The legislators, who oppose the granting a full defence by Counsel, to prisoners charged with felony, would soon understand the monstrous injustice of their own principle, if, in cases of *property*, they, being *defendants*, were not

* A certain writer in the *Edinburgh Review* remarks that 'of all false and foolish dicta, the most trite and the most absurd is that which asserts that the Judge is Counsel for the prisoner. We do not hesitate to say that this is merely an unmeaning phrase, invented to defend a pernicious abuse. The Judge cannot be Counsel for the prisoner, *ought not* to be Counsel for the prisoner, never is Counsel for the prisoner.'—*Edinburgh Review*, Dec. 1826. (No. 89, p. 81.)

allowed by law to make a full answer and defence to the plaintiff's case, as stated by his Counsel. Sir Robert PEEL would not think it exactly just and reasonable to have to answer a declaration in ejectment upon such terms: so much more value is there set in this "Christian" country on the property of the rich, than on the lives of the poor.

When the statutes were passed to give prisoners accused of treason, the right of making a full defence by Counsel, the persons most generally charged with that crime, moved among the higher orders of society. Even the Nobles of the land wore their heads by a very insecure tenure while the doctrine of *constructive treason* prevailed in troubled times, and Counsel was not allowed to speak for the prisoner. Hence the facility with which those statutes passed the legislature; while the recognition of a similar right on behalf of poor men accused of *felony*, has always been rejected.

We have not space or time at present to examine the Bill in detail; but we shall advert to it again before the Bill comes on for the discussion of a second reading. It has a clause also, to allow a defence, of persons accused, to be made by Counsel or Attorney before the Justices [in Session]; and certainly no description of judicial personages stand more in need of legal assistance, in coming to a proper conclusion upon the cases brought before them.*—*Morning Herald, Tuesday, April 9, 1833.*

* Mr. EWART's Bill, after various postponements, passed, at the close of an interesting debate, its Second Reading, upon Wednesday, the 17th July; when, it being agreed that it should be referred to a *Select Committee*, thirty-three Members were named for that purpose, the whole, with one or two exceptions, being *Members of the Bar*. On the 22d, two other Lawyers were added. By the Journals of the House, it appears that this Committee made its Report upon the 1st of August, and the Bill was recommitted for the 7th, (being in the interim reprinted, as amended), but subsequently deferred to Wednesday, the 14th of August. On that day, owing to the Session being near its close, the committal was "put off for six months." Before the prorogation of Parliament took place, Mr. EWART placed on the "Order

Attempt to introduce the practice of interrogating prisoners at the Mansion House, by the Lord Mayor of London.

A course of proceeding has been adopted by the present Chief Magistrate* of the City of London, in the exercise of

Book" of the House of Commons a "Notice" of renewing his Bill in the next Session, which he accordingly did, as will hereafter appear. We cannot, for the present, quit the subject without giving insertion to the subjoined excellent article from *The Courier*.—ED.

‘ SCOTLAND.

‘ This is the period of the Criminal Circuit Courts—of the Assizes in Scotland. Of its criminal law and form of trial, Scotland has just cause to be proud. We are unacquainted with any country in the world in which a prisoner (we do not, alas ! mean to include political offences) has a more perfectly fair trial.

‘ A prisoner can force on his trial within a certain number of days after his arrest.

‘ The Jury to try him are chosen with impartiality :—this was not always the case ; the beneficial change in this respect, Scotland owes to the persevering exertions of Mr. KENNEDY, the present Member for Ayr, and one of the Lords of the Treasury.

‘ The prisoner must have a copy of his indictment, specifying with accuracy the time and place of the alleged crime, as well as a list of witnesses, many days before his trial.

‘ The Court before which he is to be tried, as matter of course, assigns him Counsel, if inability to retain Counsel be alleged.

‘ When the evidence has been taken against and for the prisoner, the Counsel for the prosecutor first addresses the Jury. The Counsel for the prisoner follows, and must have the last word. The Judge sums up, and the Counsel for the prisoner may again be heard in arrest of judgment, after the Jury give in their verdict.

‘ Such a mode of trial almost ensures the triumph of justice. The innocent are acquitted—the guilty alone condemned. The whole people of Scotland are, we are convinced, impressed with this belief.

‘ The expence of the trial, on both sides, is, in almost all cases (the exceptions are indeed of the most trifling description) borne by the Crown.

‘ It is not our present purpose to contrast the Scotch form of trial

* For that year, Sir Peter LAURIE.

his criminal jurisdiction, which it becomes necessary to inform him is not in accordance with the principles or prac-

‘ with that which prevails in England ; but we may venture to ask, ‘ why has a Session of the *Reformed* Parliament been allowed to pass, ‘ without so far assimilating the practice of the two countries, as to ‘ allow in England the same right to Counsel to *address the Jury* in ‘ cases of felony as of misdemeanor ?—Is a man’s life of less value than ‘ merely his personal liberty, or his goods and chattels ?

‘ The Whigs, when out of office, were pretty generally pledged to ‘ introduce this alteration, so necessary for the impartial administra- ‘ tion of justice. We do not make this remark in the spirit of accusa- ‘ tion, or sarcastically. We willingly admit that the Ministers have ‘ done much in spite of many untoward obstacles ; but they have done ‘ nothing, we maintain, more important towards the security of personal ‘ liberty, than that which here *remains to be done, and which they are* ‘ *bound to accomplish.*

‘ The Lord Chancellor (BROUGHAM) is pledged to the measure*’

* These hopeful anticipations of *The Courier* were never realized. As to the conduct of the Noble and Learned Lord, in reference to the Prisoners’ Counsel Bill, we will state the facts, from which the public may form their own opinion.

In the Session of 1834, when the Bill, having passed the Commons, came up to the Lords, Lord BROUGHAM declined to take it up; and, his example being followed by other professed advocates of criminal law Reform, it fell to the ground for that session.

In the Session of 1835, the Bill again passed the Commons, and was brought to the Upper House, when Lord BROUGHAM, being still CHANCELLOR, became instrumental to its defeat, by throwing doubts upon the propriety of passing the measure without further enquiry, which led to the appointment of a Select Committee, and occasioned considerable delay.—The result was, Lord BROUGHAM declared that the evidence had increased his doubts so much, as to induce him to concur in opinion with those Noble Lords who thought the measure ought to be postponed.—(*See Hansard’s Debates.*)

In the Session of 1836, Mr. EWART having with admirable perseverance succeeded, for the third time, in carrying the Bill through the Commons, it was of course submitted for the sanction of the other branch of the legislature, where it remained a considerable time, unnoticed by any Member of the Government, (Lord MELBOURNE’S,) or by any Noble Lord on that side of the House. In this deserted state Lord LYNDHURST found the Bill, and undertook its management. The result is known to the public. But, it is curious that at the time when Lord LYNDHURST was exercising his splendid abilities in advocating the measure, Lord BROUGHAM, then no longer in attendance on Parliament, wrote a letter to Lord Chief Justice DENMAN, communicating his entire concurrence in the measure, which, while he was upon the Woolsack, had, for some reason or other, never received his assistance.—ED.

tice of the law of England:—it is that of *interrogating* prisoners brought before him on charges of felony, and

‘—the Lord Chief Justice DENMAN is pledged to it—Mr. George LAMB, now Under Secretary of State for the Home Department, is most particularly pledged to it: he it was who so ably advocated its necessity some eight or ten years ago—and Sir James SCARLETT, unquestionably a most valuable authority on such a subject, is, most of all, pledged to it, having made this memorable and manly declaration in his place in Parliament:—“I have myself *often* seen persons I thought innocent, convicted, and the guilty escape, for want of some acute and intelligent Counsel to shew *the bearings* of the different circumstances on the conduct and situation of the prisoner.”

‘We are not ignorant that Mr. EWART, the Member for Liverpool, has already brought this subject before the House of Commons, and has given notice of his intention again to call their attention to it next Session. We willingly accord him our meed of praise and grateful acknowledgments, for his exertions to remove a foul blot from the system of administering the law in criminal cases in this country; but this is a measure of paramount necessity, and ought to be proposed to Parliament under the sanction of *the Government itself*. We have successfully interested ourselves, and most justly and wisely have we done so, for the slaves in our Colonies, for the children in our factories; but are our fellow-countrymen, falsely, unjustly accused of crime, less entitled to our protection, and to our regard and sympathy?

‘We trust that another Session of Parliament will not be allowed to pass without having this stain on the law of England removed. Let only the necessary measures be brought forward under the auspices of the Government, supported by the legal knowledge and talents of the Solicitor-General,* who delights to labour in a good cause—in the cause of humanity—and with the sincerity and honest zeal for which he is not less distinguished than any lawyer in the House, it cannot fail to be carried.

‘We have thrown out these hints, more with a view to provoke

* Sir John CAMPBELL, who subsequently was so far from promoting this measure of justice, as anticipated by *The Courier*, that, when it was upon the eve of its triumph in the Commons, in 1836, he proposed an “Amendment,” essentially altering the Bill, by depriving the prisoners’ Counsel of the *last word*. In that attempt, however, he was, upon a division, signally defeated.—En.

endeavouring to *extort* from their own mouths admissions that may substantiate, or appear to substantiate, the case for the prosecution, contrary to that established and well-known maxim of English law, "*nemo tenetur prodere seipsum.*"

The Lord Mayor may think that he facilitates the course of justice, by endeavouring to extort evidence from the prisoner's own mouth; but, in reality, he impedes it: for no confession of a prisoner will be received upon his trial, which is not proved to be strictly *voluntary*. It is, therefore, that Magistrates who know their business, always caution the prisoner, before he says any thing, that he is not bound to make any statement, unless he pleases, and that his words will be taken down, and used in evidence against him. Enquiries to ascertain whether a prisoner's statement was perfectly voluntary are, as a matter of course, made at the trial, before it is allowed to be read in evidence. So scrupulous is the law that no compulsion shall be upon the mind of the prisoner, that if the Magistrate, without using threat or promise of any sort, only puts him upon his oath, and he makes a full confession of the charge, such confession cannot be received against him in evidence. A remarkable instance of this occurred at the Assizes for Buckinghamshire, two or three years ago, where one of two men charged with a murder of an atrocious description, having made a full confession before a Magistrate, which was committed to writing, it was rejected by the Court, because it turned out upon enquiry that it had been obtained from the prisoner under the obligation of an oath.

' discussion, than from any other motive. The more the subject is
' canvassed, the more certain will be the success. Not one objection
' can be made, that does not admit of easy and complete refutation.

' The English practice is peculiar to itself. The North Americans,
' whose laws are those of England, have for many years allowed the
' benefit of Counsel to all criminals. The Napoleon Code expressly
' adopted the rule followed in Scotland, allowing the prisoner's Counsel
' to have the last word.'—*Courier*, September 26, 1833.

To *interrogate* prisoners by Magistrates, is the practice of the French law, but not that of the law of England. So to admit *hearsay* evidence against the prisoner, is the practice of the French law ; but, we need hardly say that from the Criminal Courts of this country, hearsay evidence is excluded. We observe, however, that the Lord Mayor, not content in departing from the established practice, by interrogating the prisoner, sometimes admits hearsay statements as evidence against him.

It is good to have an honest zeal for the public service, in the administration of the laws ; but zeal, unless tempered with discretion, and disciplined by knowledge, works more harm than good. The Lord Mayor will find that his departure from the settled practice of the law, will obtain no favour in the eyes of the Judges of the land. Committing prisoners upon statements which are not evidence, or extorting admissions contrary to law, will rather facilitate the escape of prisoners, when the regular trial takes place, than promote their conviction.

The Lord Mayor has probably been led into the mistake into which he has fallen, by observing that the Act of the 7th Geo. IV. cap. 64, sec. 2, says, that “ the Justice or Justices, “ before he or they shall commit to prison any person arrested “ for felony, or on suspicion of felony, shall take the *examina-
“ tion* of such person, and the information of such persons who “ shall know the facts and the circumstances of the case, and “ shall put the same, or as much as shall be material thereof, “ into writing.” The word “ examination ” must be taken in the sense in which it is explained by the practice of the law : it means, in legal interpretation, a *voluntary statement* on the part of the prisoner, after being *cautioned*—not *interrogated*—by the Magistrate. And when the statute says that the Magistrate shall take such examination, and put it into writing, it is only *directory* to the Magistrate to take down such a statement in writing if the prisoner chooses to make it ; but not *compulsory* on the prisoner to make any

statement at all. If this practice be wrong, it is not for the Magistrate filling the civic chair to alter it; that can be done only by the King, Lords, and Commons of the Realm, in Parliament assembled.

Formerly prisoners used in France and England to be put to the rack, to force them to make disclosure. The French nation has abolished that physical torture, the invention of barbarous times. The law of England allows neither *physical* nor *mental* torture of a prisoner; therefore allows no person who has him in *duress*, to interrogate him. If the French system is to be introduced here, let us, at least, have an Act of the Legislature for it, instead of the civic ordinance of the Lord Mayor of London.—*Morning Herald, Monday, April 15, 1833.*

Mr. O'CONNELL's *approbation of the novel practice of interrogating prisoners.*

It does not at all surprise us that the comments which we made the other day upon the new magisterial practice of *interrogating* prisoners, and endeavouring to extort confessions from them, have been assailed in certain quarters. We cannot forget what sarcasm and ridicule were thrown upon the Judges by some professedly liberal, or, rather, ultra-liberal Journals a few years ago, on account of the scrupulous care and caution which they exercise in receiving statements of prisoners' confessions, and even pleas of "guilty" in open Court. We never thought that care and caution unnecessary, and we are prepared to give our reasons. But, previously to doing so, we may be allowed to observe that we reprobated the Lord Mayor's mode of examining prisoners the other day, simply on the ground that it was contrary to the established practice of the English law, and therefore calculated to impede rather than facilitate the course of justice, inasmuch as confessions improperly obtained, would not be admitted in evidence.

We instanced the case of a Magistrate, whose zeal to obtain the confession of a prisoner on a charge of murder being greater than his knowledge or his discretion, led him to violate the formalities of the law; in consequence of which, the confession, which was a full and complete one, was rejected on the trial. We said that if the practice of the superior Courts, touching confessions, were wrong, it could not be altered by the civic ordinance of the Lord Mayor of London; but must be the act of the King, Lords, and Commons, in Parliament assembled.

But though we did not then express any opinion upon the *merits* of the practice, but confined ourselves to the question of *legality*, it was not because we did not entertain a decided opinion on the subject. It now comes before us in a shape which makes it necessary for us to state what that opinion is. As to the Government scribes, who carry the panniers of "all-work" for successive Administrations, we make no account of their taunts and sneers. They are saved all the trouble of forming an opinion for themselves, by having nothing to do but to echo the prevailing sentiments on the Treasury Bench, and reflect the wisdom of any Lord John, or Right Hon. Augustus, who undertakes to illumine the public mind with the intelligence which high office so lavishly pours upon the heads of its possessors. The opinions of such a person as Mr. O'CONNELL, upon a question of criminal law, are quite another matter: they are entitled to consideration. Let us proceed to examine them, as stated in the discussion of Tuesday night, arising out of Sir E. WILMOT'S motion relative to juvenile offenders.

On that occasion Mr. O'CONNELL is reported to have said that, "the present Lord Mayor of London had been greatly blamed for interrogating prisoners. Now, instead of deserving blame, he was entitled to great praise for so doing, his only object being to elicit truth." We admitted the excuse for his conduct contained in the latter part of this

sentence, when we ascribed to him an honest zeal for the cause of public justice, but not tempered by sound discretion.

If a Magistrate should be allowed to take what course he pleases with a prisoner, because his object may be to elicit truth, there should be no restraint placed upon his zeal by any *settled rules of evidence whatever*. This argument, therefore, of Mr. O'CONNELL'S has the logical vice of proving *too much*: it would justify not only mental but physical torture, because the object is to elicit truth. It is curious enough, that upon this very ground the application of the rack to extort a confession, was formerly justified by those jurists who adopted it into the code of France, and other foreign nations, from the imperial law of Rome. Nay, they went farther, in ascribing a laudable motive to so barbarous a practice—they said that they approved of the torture, from a *tenderness for the lives of men*! They explained it in this way—they said that the laws cannot endure that any man should die upon the evidence of a false, or even a single witness; and therefore the administration of the torture was contrived, that guilt should manifest itself by a plain confession, or innocence by a stout denial! "Thus," as an enlightened writer on English law observes, "rating a man's virtue by the hardiness of his constitution, and his guilt by the sensibility of his nerves."

If the practice of interrogating prisoners by those who have them *in duress* be once allowed, it will soon be carried to a pitch of mental torture by the inferior instruments, which will, once more, make the interposition of the legislature necessary. Every Dogberry in the kingdom will constitute himself an interrogator; and, putting what interpretation his intemperate ignorance may suggest upon the prisoner's words, or twisting them to serve a purpose which will obtain him a reward, or ingratiate himself with his superiors, he will drive a profitable traffic in the most suspicious of all evidence, to the scandal and disgrace of public justice.

Mr. O'CONNELL is further reported to have said, "The innocent would have nothing to fear from such a system, while the real criminals would be obliged to give a full explanation of their conduct ; and they should be told that, if they did *not do so, the inference would be against them.*" Now if this is not to *presume* men are guilty before they are *proved to be so*, we know not what is. The "real criminals" are to be obliged to give a full explanation of their conduct, or the inference is to be against them. So, if the Magistrate, in a case of *constructive treason*, for instance—(and we put this case, to bring the absurdity and oppression of the doctrine more home to the apprehension of Mr. O'CONNELL)—if, we say, the Magistrate, a Tory or a Whig, we care not which, in a case of constructive treason, thinks what an innocent man states, upon interrogation, is not a "full explanation," he must *infer* that he is *guilty*, and proclaim that inference in sending him to undergo the *superfluous* investigation before a Jury ; while a prisoner who tells plausibly circumstantial lies, is not to have his case prejudged by any such condemnatory inference. This is law better suited to the days of Titus Oates and Dangerfield, than to any era which we hope England will ever have the misfortune to see again.

We have not the same objection to the interrogation of prisoners *in open Court*, before the Judge who tries the cause, and in presence of the Jury that decide upon it, that we have to the practice of interrogating, and extorting confessions *out* of it. All such confessions are to be received, if at all, with great suspicion. It is worth observing that one of the statutes of treason makes this important distinction. In the statutes of treason, in general, the evidence of two witnesses is required for conviction ; but the Act of the 7th William III. c. 3, enacts that the *confession* of the prisoner shall be equivalent to the evidence otherwise required, and that confession must be *in open Court*. Of confessions not made in open Court, BLACKSTONE, who cannot be accused

of leaning more to the rights of the subject than to the prerogative of the Crown, says, "They are the weakest and
" most suspicious of all testimony—ever liable to be obtained
" by artifice—false hopes—promises of favour, or menaces—
" seldom remembered accurately, or repeated with due precision, and *incapable in their nature of being disproved by
" other negative evidence.*"

But the Judges are charged by Mr. O'CONNELL, if the report be correct, of repudiating even confessions *in open Court*. He is made to say "The maxim laid down by the
" Judges was, that parties who acknowledged themselves
" guilty, were to put in a plea of *not guilty*—a maxim that
" sanctioned a violation of all truth ; yet that plea often succeeded:" and then he gives an instance of a man who confessed himself, in open Court, guilty of murder, but was induced to plead not guilty, and acquitted. Now the practice of the Judges in this country is, that when a prisoner pleads "guilty" to a charge of treason or felony, the Judge, very reasonably presuming that his motive in so doing is to obtain a mitigation of punishment, humanely tells him that if he puts in such a plea under that impression, he is mistaken, and the Court will allow him to retract it, and put himself on his trial ; but if he persists in his plea, it will be recorded, and nothing will remain but to pass the sentence of the law. Sometimes, after this admonition, the prisoner withdraws his plea of "guilty ;" but if he persists in it, it is of course *recorded*—and, without further evidence, judgment is pronounced. We ask if this is not a fair and reasonable course to pursue ; and whether it is not merely putting in practice, by the representatives of His Majesty, the noble maxim of the King's coronation oath, of administering justice in mercy ?

That it is possible for persons to accuse themselves of crimes which they have never committed, numerous instances on record have shewn ; but we need only mention here the fact of persons having made confession, when laws against

witchcraft were in force, of having committed that *impossible* crime ; nay, persons have charged themselves with murder, who have turned out to be innocent.

Again, Mr. O'CONNELL ought to know, and does know, that every indictment contains matter of law and fact mixed up together ; and a man may be *guilty* of certain acts laid in the indictment, and yet *not guilty* of the crime as therein *legally* charged. Need we instance what nice distinctions sometimes exist between cases of *murder* and *manslaughter* ? An ignorant man may be induced to confess himself guilty of the former, when, in the eye of the law, his offence may be a less penal species of homicide, which incurs no forfeiture of life. This is another reason why Judges should not be blamed for wishing to hear the facts from the mouths of the witnesses, which a plea of guilty precludes.

But though we have less objection to the interrogation of prisoners by the regular Judges in open Court, we should be sorry to see that licence given to Magistrates at Quarter Sessions, more especially in the administration of *the game laws*. Besides, all that indecorum which shocks Mr. COBBETT's notions of the propriety of judicial proceedings in French Courts, chiefly arises from the practice of interrogating the prisoners, which produces most extraordinary dramatic scenes, sometimes between the Judges and the prisoner, sometimes between the latter and the witnesses. Surely we had better adhere to the solemnity and decorum of our own judicial practice.—*Morning Herald, Sat., April 20, 1833.*

Interrogation of prisoners continued—reply to a Correspondent.

A correspondent, who appears to entertain no mean opinion of his own legal *acumen*, and who is, moreover, a great admirer of Mansion-house law, puts some questions to us, touching the interrogation of prisoners, and confessions, with the triumphant air of one who felt convinced that his own interrogatories were perfectly unanswerable.

He asks us, in the first place, "Was not the person "alluded to as having been tried in Bucks acquitted, not on "the ground of the Magistrate having examined him, but "having examined him on oath?"

If our interrogator had not read very carelessly the article which he criticizes, he would have found it unnecessary to ask this question. We stated distinctly, that the confession of the prisoner was rejected, *because* it had been taken upon oath; and we adduced the circumstance merely in illustration of our argument as to the strictness of the law, in requiring that confessions should be purely *voluntary*. The Magistrates in that case (which was *Rex. v. Tyler and another*) had not interrogated the prisoner, nor was it pretended that he held out any inducement to him to confess. The prisoner of his own accord had expressed his willingness to tell all he knew about the matter. The usual caution was given him, but, persisting in his desire to make a confession, the Magistrate—whose object, no doubt, it was to serve the cause of public justice, and obtain nothing but the truth—tendered him the oath, and he was accordingly sworn to the statement. To a superficial reasoner this solemnity accompanying the statement, would appear to be an additional guarantee for its truth. But the law says that an oath places a sort of *compulsion* on the mind of a prisoner; and consequently that any statement made under its sanction, is, strictly speaking, not a *voluntary* one. This is the *principle*, to elucidate which we mentioned the *fact*; but our Correspondent does not seem to be very ready at distinguishing between a fact and a principle.

We said that the confession was rejected on the trial, but we did not say that the prisoner was *acquitted*. The fact was, the evidence of the witnesses in the case was sufficiently strong to induce the Jury to return a verdict of guilty against both the prisoners who were indicted for murder—one of whom had never made any admission of his guilt, while the other had made no less than *three* distinct

confessions, all of which differed from each other in material circumstances. Now, although our interrogator has profound reliance on the infallibility of confessions, we think it would tax his ingenuity to shew by any process of logic, how three contradictory confessions could be all true.

Again, we are asked "Is not every prisoner either innocent or guilty? If so, can any innocent man criminate himself? And does not whoever says he can, talk sheer unadulterated nonsense?"

At the risk of being charged with "talking sheer unadulterated nonsense," we say an innocent man may criminate himself: we say more—we say there are numerous instances of innocent men having criminated themselves. Need we allude again to the trials for *witchcraft*, which produced many instances of *self-accusation* to the capital charge of dealing with evil spirits, to the detriment of the health and property of others? Now all those persons who so *criminated* themselves, and were executed, must have been *innocent* of the charge, and simply for this reason, that the crime was *impossible*. If the laws against witchcraft were now in existence, it would be impossible for either witch or conjurer to escape from condign punishment through the meshes of *Mansion-house law*.

We recollect a case, though we do not at present remember the name, of a man who accused himself of murder, and, making an ample confession, delivered himself up to justice. Circumstances transpired which, notwithstanding his confession, made his guilt to be more than doubted; and, on being pressed, he at length admitted that he had made up his mind to suffer the punishment, in order to claim, upon conviction, a reward which had been offered, and hand it over to his starving wife and children. Here was an instance of an innocent man criminating himself, though we are told it is "sheer unadulterated nonsense," to say such a case can ever happen.

Mr. LIVINGSTON, the celebrated American writer

against capital punishment, tells of an instance which he knew, of a man being convicted of a murder, who after conviction made a confession of his guilt, which set all doubts at rest ; yet a circumstance happened, before the time appointed for his execution, which afforded sufficient reason for not allowing the law to take its course ; that was no other than the re-appearance of the supposed murdered person alive and well, by which the man who had been convicted of murdering him, was satisfactorily convicted of being a liar, in confessing the imputed crime ;—yet to say he was not guilty, though the murdered man was alive and well, is to “ talk sheer unadulterated nonsense.”

Instances might be multiplied, but we have not space for them. We have shewn the possibility of what our Correspondent thought to be impossible.

Another question put to us is the following—“ Is the Magistrate invested with judicial power for the protection of the public, or the protection of the man who fears he may criminate himself?”

Properly speaking, the Magistrate has no *judicial* power in the cases about which the controversy arises. He can only enquire, and *commit the prisoner for trial*, but cannot *adjudicate*: that is the province of the *Judge and Jury*. In his mode of enquiry he must regulate himself by the rules and the practice of the law ; and if the law be wrong and unreasonable, *Parliament* alone can alter it. However laudable a Magistrate’s motive may be, he cannot substitute his own notions for the regular course of legal procedure.

As the law stands at present, a prisoner is not bound to make any statement in answer to a Magistrate’s interrogation ; and the Magistrate who endeavours to impress upon his mind that he is bound to answer him, and who rebukes and attempts to put down his legal advisers for cautioning the prisoner that he is not bound to answer, acts *against law*, and is rather likely to impede, as we said before, the course of justice than facilitate it, by obtaining examinations

of prisoners which will *not* be admissible in evidence. If, for instance, a constable, taking a prisoner before a Magistrate, were, by either threat or promise, to obtain a confession from him, that confession could not be received in evidence; nor, if, being afterwards brought before the Magistrate, the prisoner should make a new and full confession, could that latter confession be received on the trial, unless it were proved that the Magistrate had *cautioned* him previously to its being made, although he put no interrogatories to him whatever. But, if the Magistrate cautioned him, the second confession would be evidence.—*Morning Herald, Saturday, April 27, 1833.*

Mr. LENNARD'S Bill to repeal the penalty of Death in cases of Housebreaking with larceny.

In the House of Commons Mr. LENNARD moves to-day, pursuant to notice, for leave to bring in a Bill to repeal so much of the 7th & 8th Geo. IV., cap. 29, sec. 12, as enacts that, if any person shall *break and enter any dwelling-house, and steal therein any chattel, money, or valuable security of any value whatever*—or shall steal any such property to any value whatever in any dwelling-house, any person therein being put in fear, every such offender being convicted thereof, shall suffer *death* as a felon.

It will be at once seen, that the object of the proposed Bill is to extend the principle of Mr. EWART'S Act with regard to "privately stealing in the dwelling-house," to offences differing from that crime rather in name than in reality;—such is the species of offence technically called *housebreaking*, as contradistinguished from burglary: the latter being a felonious breaking and entry committed in the night-time—the former in the day; it most generally happens when there is no person in the house, and, consequently, when there can be no peril of life or personal violence. The other capital offence to which Mr. LENNARD'S Bill applies,

and which consists in stealing in the dwelling-house, "any person therein being put in fear," differs from *housebreaking* in this, that, as the latter part of the definition implies, it is always committed when some inmate of the house is within, and alarmed without actually suffering personal violence. Another point of difference is, that the entry is not preceded by a breaking of the house, either constructive or actual.

We observe, with unfeigned satisfaction, that the Right Hon. Mr. STANLEY, in his address to his constituents of the northern division of Lancashire, the other day, made pointed and strong allusion to the still sanguinary character of our criminal code, and promised his best endeavours towards its effective amelioration. After adverting to the great question of "negro emancipation," he said—

—'There is one other topic connected incidentally with the situation upon which I am about to enter, which may call for some observations on my part; I mean a question not less earnestly desired by the people of this country—the mitigation of the criminal code.'—

(Loud cheers.)—He then went on to state that—

—'The extent to which the punishment of death was inflicted, was a disgrace to this country, or rather the extent to which it was made a legal penalty, for, in point of fact, the punishment was not, in numerous cases, ever inflicted; and while, in *theory*, our criminal code was *most sanguinary and atrocious*, in *practice*, the uncertainty which attended the infliction of punishment, operated to afford great impunity to crime.'

It is this plain and simple principle which the admirers of exterminating legislation find it so difficult to comprehend. We are the less surprised at this, inasmuch as it is no uncommon thing for cruelty of disposition and feebleness of intellect to go together; and what more striking proof of mental incapacity can be given by a Legislator or a Magistrate, than a proneness to uphold sanguinary punishments after centuries of experience have shewn, not only their inefficiency to repress crimes, but to prevent their increase? It is not humanity that cries out against this barren blood-

shed of a code equally ferocious and imbecile, so much as reason itself—*reason*, which denounces intemperance of passion every where ; and never more than when it arms justice with the weapons of revenge, and, by making punishments vindictive, renders them comparatively powerless.

Rightly does Mr. STANLEY take a distinction between the theory and the practice of the criminal code. In one of those offences for which Mr. LENNARD moves to repeal the penalty of death, there was, under the sanguinary law, in the year 1831, no less than 517 convictions in England and Wales, and but one execution ! In the last year the capital convictions were 583, and the executions, though stated as *four* in the official returns, we believe will be found to have been *none* ; for, if we are not greatly mistaken, those four cases, which were set down as *housebreakings*, were *burglaries*. We trust that the reformed House of Commons will afford the enlightened effort of Mr. LENNARD such support as will, so far, remove the deep disgrace of what Mr. STANLEY calls a “sanguinary and atrocious theory” from the statute-book, and reconcile the theory to the practice, and both to reason and the principles of Christian civilization.

One of the inevitable results of removing the *capital* punishment from any crime for which it is considered inordinately severe, is an *increase of prosecutions* for a time. Forgery, for instance, is one of those crimes which, while it was capital, many committed with impunity ; so that the property of all who were averse to a law of blood, was left to the mercy of forgers. Now that the law is altered to a mitigated punishment, such conscientious scruples will no longer prevent the prosecution of culprits. The increase of prosecutions, for some time, will prove the *efficiency* of the new law ; and yet there are some persons filling the offices of Judges and Magistrates, who make that very increase of prosecutions an argument for returning to the old sanguinary system, which proved itself as feeble as it was barbarous.

But, we tell them that the day of human sacrifices to paper credit is past ;—a practice sanctioned by reason, morality, and civilization, being once adopted, it is vain to think of inducing the country to return to the “ sanguinary and atrocious theory,” which was the monstrous error of the dark ages of legislation. Commercial credit flourishes in America, in France, and Holland, without laws of blood, and must do so here. When culprits find, by experience, that the punishment *is certain*, they will learn to fear the law more than while its vindictive excess flattered them with hopes of impunity.—*Morning Herald, Tuesday, April 16, 1833.*

The substance of Mr. LENNARD'S Speech, in the House of Commons, on the occasion above referred to, we here subjoin.—ED.

Mr. LENNARD, in rising to submit his promised motion, said, that when his Honourable friend, the Member for Middlesex, some weeks ago, presented the London Petition for the mitigation of the criminal code,* they were reminded, and very properly, of the great improvement which had already been made in it. Although he fully admitted that, yet he thought it could not be denied that much still remained to be done, before the criminal law could be said to be in a satisfactory state. The more the public were accustomed to consider the subject of criminal jurisprudence, the more anxious did it become to remove all remains of that sanguinary character which was impressed on it in those times when, in the words of MIRABEAU, blood, and nothing but blood, and pounds of flesh, were required for every offence.

He wished the Government had leisure to undertake an entire revision and reform in the criminal code. It seemed to him that such a work could be best done by the Government. But there were many gentlemen in that House, whose opinions were entitled to great authority, who entertained a different opinion, and who thought that the necessary improvements in our code were best made by the exertions of individual Members, bringing forward motions for such amendments as to themselves might seem most required. He (Mr. L.) had therefore determined to bring under the consideration of the House the state of

the law in regard to two offences, respecting which he thought there would be no question but that the law ought to be changed. But the change he should propose was rather nominal than real. The laws denouncing punishment of death on the crimes of "housebreaking with larceny," and "stealing in a dwelling-house, any one therein being put in fear," had long been all but a dead letter in the statute-book. They had been for many years, and they could now be, but very rarely executed; they seemed left on the statute-book only as a remnant of the barbarism of former times.

Looking at the returns, it would be seen that for the crime of housebreaking, during the last seven years, out of every 91 in England and Wales who had been convicted, not more than one had been executed. Taking the last two years, the proportion of executions to convictions was still less. In 1831, out of 517 convictions there had been only one execution. In 1832, out of 583 convictions there had been four executions; but in this latter case he believed it would be found, that those which were stated to be executions for housebreaking, were in reality executions for burglary. He had been informed that this was the case, on authority in which he placed the greatest confidence. Now, during the same two years in London and Middlesex, although there had been 122 convictions for this offence, there had not been one execution.

Of the other offence, *viz.*—stealing in a dwelling-house, any one therein being put in fear—no distinct mention was made in the returns, but he supposed it was included under the general head of larceny in a dwelling. And with respect to the latter offence, what did the returns shew? Why, that out of 867 who had been convicted of that offence in England and Wales, in seven years, 14 only had been executed. That in 1832, out of 59 persons convicted, none were executed. Again, in London and Middlesex, during the last three years, there had been but one execution*; and during the two years preceding the last three years, there had been but one execution in each year. Here, then, was expressed, in the strongest possible manner, what BECCARIA called the tacit disapprobation of the laws in the non-execution of them. If in the time of Sir S. ROMILLY it had been admitted to be a grave charge against our laws, that not one in twenty of those who were convicted was executed, what could be said of a law of that sort where not one in ninety was executed!

* *John Broach*, executed May 25, 1831. See Vol. i. p. 117, *et seq.*

In such a state of things it seemed absurd to pretend that the law could be any terror to evil doers. The criminal, where the chances were so greatly in his favour, was sure to calculate on the chance of escape. But it was a terror to the injured and the innocent. Those who had made enquiries into the subject, knew that when in cases of that sort the law was allowed, as it was said, "*to take its course*," the sure result was, to make persons more unwilling to prosecute than they were before, and to increase the number of acquittals where there were prosecutions; to bring about that state of things so well described by the present Archbishop of Dublin, who says that he met with instances, in his own neighbourhood, of persons of the best character not only refusing to prosecute, but labouring in every way to promote the escape of the guilty; because the law denounced death against the offence, and they could not bring themselves to incur even the remote and almost imaginary risk of exposing a thief to that fate.

The Honourable Member then said, he held in his hand some Tables which proved, beyond all possibility of contradiction or doubt, the fact of the unwillingness of Juries to make themselves instrumental in giving effect to the sanguinary enactments of our code. Any remarks on this subject, he was aware, might be looked upon as a work of supererogation, so well ascertained was the fact; but it was so clearly and unanswerably established by these Tables, which had been drawn up with great care and labour by Mr. WRIGHTSON,* that he was really anxious to trouble the House by referring to them for a few minutes. A comparison was made, by Mr. WRIGHTSON, of the total number of acquittals on capital charges with those on non-capital charges, during the seven years ending 1830, from which it appeared that in England and Wales the centesimal proportion of acquittals to commitments on capital cases was 28, while on non-capital charges the acquittals were only 18; the difference, between the two, being 10. Thus in England, 10 more out of every 100 committed for trial, were acquitted† on capital than on non-capital charges.

Again, in London and Middlesex, it appeared the centesimal pro-

* WRIGHTSON, On the Punishment of Death.—See post, 101.

† These acquittals do not, of course, include the persons against whom "*no Bills*" were found, or those who, although committed, were "*not prosecuted*."—ED.

portions of acquittals to commitments in *capital* cases was 44; in *non-capital* cases, 20; the difference being 24. Why was this? If they looked at the number of cases in which executions took place in London and Middlesex, and compared them with the number in England and Wales, the cause would be apparent. In England and Wales five out of every 100 convicted were executed—in London and Middlesex ten were executed. The greater probability that the last penalty of the law would be inflicted in the latter case, made Juries more reluctant to convict, as had been observed by Mr. WRIGHTSON, the author of those statements.

Again, in these Tables they had the centesimal proportion of *executions* to *convictions*, and the centesimal proportion of *acquittals* to *commitments* for the crimes of *robbery*, *burglary*, and *housebreaking* in England and Wales, and in London and Middlesex. The first Table was for England and Wales, embracing a period of twenty-one years, from 1810 to 1830. It appeared that, throughout the whole of that period, the *executions* for robbery had been much more numerous than for the other two crimes in the Table:—the *acquittals* for robbery had been much more numerous also. In the first period of seven years, the proportion of *executions* to convictions had been—for robbery, 14; for burglary, 13; for housebreaking, 3:—the proportion of *acquittals* for the same offences had been as 36, 27, 22. For the second seven years the *executions* were as 12, 6, 1:—the acquittals as 31, 23, 16. In the third seven years, the *executions* were as 6, 3, 1½:—the *acquittals* were as 37, 21, 19.

The second Table was for London and Middlesex, and shewed, as was observed by the author of those Tables, the reluctance of Juries to convict of capital offences, in a manner still more striking and more conclusive. Thus, while in seven years, ending 1831, for *England* and *Wales*, the executions for robbery, burglary, and housebreaking, were as 5, 3, 1, and the acquittals 37, 22, 18—in *London* the executions were as 13, 8, 5, and the acquittals as 49, 34, 31. It should also be observed from these statements, that in housebreaking, where there was the smallest number of *executions*, there was also the smallest number of *acquittals*; while in robbery there was the largest number of *executions*, and the largest number of *acquittals*.

There was one other view which these Tables presented:—it appeared that, during the period in question, the *executions* in *London* and *Middlesex*, in proportion to the convictions, were—for robbery twice as numerous, for burglary nearly three times as numerous, for house-

breaking five times as numerous—as in *England and Wales*. What was the effect? The *acquittals* in London and Middlesex were, during the same seven years, proportionably much more numerous than in England and Wales.

The Honourable Member said, he had troubled the House with these statements, because they proved in the clearest manner the repugnance of Juries to find persons guilty of offences punishable with *death*: he agreed with the very ingenious author of those statements, and he thought the House would agree with him, that no further proofs could be wanting. What, then, was the effect of attempting to restrain crime by punishments which the public felt to be excessive? Its effect was to secure impunity to crime in a great many cases where it ought to be visited with a moderate punishment.

With respect to the crime of housebreaking, the law had, indeed, been lately altered; but it was to make it even more severe than formerly. Under the old law it was necessary that property to the value of five shillings should have been stolen; but by the Act introduced by Sir Robert PEEL, that was altered, and a stealing to the smallest possible amount constituted the capital offence. Why was that course taken? He did not recollect any reason which the Right Honourable Baronet gave for it. It occurred to him (Mr. L.) that it might have been done, because Juries were in the habit of finding the value of the property stolen, *under* that required to constitute the capital offence. If this was the intention of the Right Honourable Baronet, he had failed, as men ever would fail who attempted to legislate without reference to the public feeling. Juries could not now secure the escape of the criminal, by finding the property stolen to be of the value of 4s. 11d. *only*, but they effected the same object by a verdict of "*stealing only*." A similar failure had attended another of the enactments which formed part of the Bill of the Right Honourable Baronet; and he mentioned it in order to illustrate the general principle which he was advocating. By the old law, privately stealing in a dwelling-house to the value of 40s. was a capital offence. The Right Honourable Baronet, acting on a contrary principle to that which he had adopted in the case of housebreaking, raised the value to £5. Under the old law, Juries were in the habit, in a great number of cases, of finding the property stolen *under* the value of 40s. And what did they do now? Why, they found it to the value of £4. 19s. *only*.

A great deal had been said, at different times, upon the atrocious

and dangerous character of the crime of burglary ; but here were two offences confessedly of much less criminality and danger, to which the law awarded the *same* punishment that it did to a higher and graver offence. There could not well be a stronger instance, although the statute-book abounded with similar ones, of the utter disregard of principle in the formation of the criminal code. While it was so,—while it was thus capricious, and therefore unjust,—could it be expected to obtain the respect of the public, or be effective for the repression of crime? Was it not disgraceful to us to retain the capital punishment in such cases as those where the offence was comparatively a small one, while in other States they were making the experiment whether the punishment of death might not be dispensed with altogether? A writer, speaking particularly of the prisons of Pennsylvania, said there was the best of all evidence—demonstrative proof—that brutal treatment, hanging, and gibbeting, were neither the most economical nor the most efficacious, as they were certainly neither the most humane nor the most enlightened modes, of punishing crime, or reforming society.

Other States had been induced to follow the example so successfully set by Pennsylvania, and up to the present time with the best effect. Every one knew, too, that the punishment of death had been abolished in Tuscany for a period of twenty years. It was revived there by the Code Napoleon, and had not since been entirely abolished, though it was very rarely inflicted. But what was perhaps not so well known was, that during a period of sixty years in that State, taking three periods of twenty years—the twenty preceding the abolition, the twenty during which it was abolished, and the twenty subsequently—fewer crimes had been committed during the period of the abolition, than in either of the preceding or the subsequent periods. It was one of those cases which, as a matter of history, might appear more surprising than fiction. But to mention a case which came more home to themselves, and to their own feelings, it was well known that during the time that amiable and kind-hearted man, Sir James MACKINTOSH (a name never to be mentioned without feelings of deep regret for his loss) was Recorder of Bombay, a period of seven years, the punishment of death was *entirely discontinued*. If the experiment ever was to fail, its failure might have been expected in such a place as Bombay—a crowded Indian sea-port, composed of a mixed, and even shifting population. But what was the result? It had been most successful; for Sir J. MACKINTOSH declared from the Bench, in his

last charge, when he was about to return to England, that the district had been governed without one capital punishment, and with "*no diminution in the security of the lives and properties of men.*"

But he (Mr. L.) was not, at least not at that moment, advocating any such extensive alteration in this country; all he asked was, to make the written enactments, in the cases before the House, conformable to the *practice*. If he obtained leave to bring in a Bill, he should propose to abolish the punishment of death altogether for these two offences (house-breaking by day, and robbery in a dwelling); and in place of death, to give the Judges the power, at their discretion, of punishing the criminal by imprisonment, or hard labour, or by transportation for seven or fourteen years, or by imprisonment and hard labour first, and transportation afterwards. He was convinced that, under such a law as that, offences would be much more certain of being punished than they now were; which every one would admit to be the great object to be aimed at in all criminal legislation, with a view to its efficiency.

No one could have looked into the subject, without being aware of the great increase in crime of late years. He hardly supposed that that would be used as an argument against his motion. But those crimes had increased, not only in spite of, but, as he thought, from the present injudicious system of criminal jurisprudence. Be that, however, as it might, the fact, though to be deplored, was what no man could be surprised at.—What had been done to check the increase of crime? Almost nothing. We had, perhaps, the most inefficient police in the world. It was true that in the metropolis we had a police, founded, as he thought, on some wrong principles, being too much dependent on the Secretary of State for the time being, but still an efficient police; but, throughout the country generally, we had nothing which deserved the name of a police; and consequently one of the great means of preventing crime was wanting. Then, with respect to our gaol discipline, we had good laws, it was true; but they were, in many cases, shamefully neglected; and even in one of the prisons in this metropolis, he was told, there was hardly any thing which deserved the name of classification observed in it.—Again, what had they done for the improvement or education of the people? So far from having attended to that subject, they had allowed a whole generation to grow up in the manufacturing towns, under circumstances which made it impossible for them to obtain any mental improvement whatever.

Neither should they overlook the effect of such laws, as those now under consideration, in demoralizing the people. He could conceive

few things more prejudicial to the morality of the people, or to the interests of justice, than the practice of Juries finding what had been called compassionate verdicts in opposition to the strongest evidence, and, in other words, uttering a falsehood—committing perjury, for the purpose of avoiding giving effect to the law. We had begun to alter this system, but we must go on farther. He knew the reform which he was then proposing was a very trifling one, and went but a little way towards the accomplishment of those objects; but if it was adopted, it would at least remove the anomaly of treating cases of petty theft with the same severity as murder and parricide, and would enable prosecutors, witnesses, and juries to punish guilt in many cases, where they could not do it now without violence to their feelings and consciences. The Honourable Member concluded, by moving for leave to bring in a Bill for the repeal of so much of the 7th and 8th of George V., c. 29, s. 12, as enacts, that “if any person shall break and enter any dwelling-house, and steal therein any chattel, money, or valuable security to any value whatever; or, shall steal any such property to any value whatever in any dwelling-house, any person therein being not in fear, every such offender, being convicted thereof, shall suffer death as a felon.”—*Substance of Mr. LENNARD'S Speech in the House of Commons, Tuesday, April 16, 1833.*

Mr. LENNARD'S Housebreaking Bill continued.

Having noticed the subject of Mr. LENNARD'S motion at some length in our paper of yesterday, we shall content ourselves at present with a mere reference to the debate; which will, no doubt, be perused with much attention in our paper of to-day. We avail ourselves of the same opportunity to state, that Mr. WRIGHTSON'S able pamphlet “On the Punishment of Death,”* which was quoted in the speech of Mr. LENNARD, ought to be in the hands of every one who wishes well to the cause.—*Morning Herald, Wednesday, April 17, 1833.*

* ‘On the Punishment of Death. Tables shewing the tendency of the Punishment of Death to produce impunity, from the reluctance of Juries to find guilty. By THOMAS WRIGHTSON.—1833.’—Published by Hearne, 81, Strand.

The Housebreaking Bill continued.—LORD LYNDHURST'S reprobation of the conduct of the HOME OFFICE, with regard to the punishment of Sheep-stealing.

The Second Reading of Mr. LENNARD'S Bill, abolishing the penalty of death for housebreaking, as contra-distinguished from burglary, was fixed for this day. We insert a copy of the Bill in another column. It will be seen, that it fixes a *maximum* and a *minimum* of punishment, leaving judicial discretion to act freely, according to circumstances, between the highest and the lowest degree of punishment peremptorily awarded by the law.

It will be recollected that recently Chief Baron LYNDHURST complained, in the House of Peers, and justly, of the inflexible and monotonous severity of punishment enacted by the Bill which abolished the penalty of death for the offences of cattle-stealing, horse-stealing, sheep-stealing, and stealing privately in the dwelling-house to the amount of £5, and supplied its place by the *invariable* sentence of transportation for life, without any regard to the extenuating or aggravating circumstances, under which any of those offences might be committed. His Lordship asked the Secretary of State for the Home Department whether, in all cases, the sentence which the law compelled the Judges to pass, were carried into effect? He said, and the feeling which dictated the words does him great honour,—“The reason why I wish to have this information, my Lords, is, because I was engaged in the trial of several cases in which I think the punishment was too severe; but I had no discretion as the law stands. It appears to me, my Lords, and to other Judges with whom I have held communication, that a sentence of transportation for life, in many of those cases, is a severe and harsh sentence, much beyond what the nature of the offence, compared with the punishment for other crimes, warrants.”

His Lordship then adverted to the case of a man who kept

a few sheep of his own in a mountainous district ; and one of his ewes having lost its lamb, he took a lamb which had been just dropped by another person's ewe in the immediate neighbourhood, and had it nourished by his own ;—he was convicted of sheep-stealing, and the sentence was the same as that of a man found guilty of stealing a whole flock. Undoubtedly such a uniformity of sentence, where the circumstances of criminality, and the loss to the injured parties, are so widely different, shocks all notions of reasonable and proportionate punishment.

Mr. EWART'S Bill, however, was not originally chargeable with any such blind and indiscriminate severity. The abolition of all judicial discretion, of which Lord LYNDEHURST so properly complains, was the work of Lord WYNFORD, himself a Judge, who ought to have known better than to have applied the same punishment to offences which, though bearing the same name, judicial experience must have taught him were often of very different degrees of criminality. It is true Lord MELBOURNE gave his cordial consent to Lord WYNFORD'S amendments ; but that did not surprise us : for the celebrated Spring-Gun Bill, and other matters, have long since convinced us that the present Home Secretary has no very enlightened notions on the subject of criminal justice.

Having protested* against Lord WYNFORD'S "amendments" at the time when they were proposed, we have since had some satisfaction in observing, that almost every Judge on the Bench has condemned them ; and the opinion of Lord LYNDEHURST, as that of one of the ablest judicial characters of the day, is conclusive as to the propriety of their abolition.

As it is impossible for the Legislature to forecast all the circumstances under which any particular species of crime may be committed, it is enough that it fixes the penalty for

* See our First Vol. pp. 289, 290, 316.

the highest and the lowest degree of the offence, and leaves a certain latitude of judicial discretion to deal, upon a sort of equitable principle, with the intermediate degrees. It was on such a principle Mr. EWART'S Bill was originally framed; and on the same principle it will be seen that Mr. LENNARD'S is drawn up. Those who think, as we do, that the highest degree of the crime of housebreaking should be severely punished, can hardly be disappointed at finding such a punishment appropriated to it as four years' imprisonment to hard labour, and transportation for life afterwards; nor can we suppose that for the lowest degree of the offence, a year's imprisonment will be thought too lenient: seeing that lifting the latch of a cottage with a felonious intent, when no person is within, will constitute the offence of housebreaking, if an article of the smallest possible value be actually stolen. We may as well here observe, that Sir Robert PEEL extended the penalty of *death* to some cases of housebreaking, to which it had not applied before.

Lord LYNTHURST is represented, in the parliamentary report, as having alluded to two cases of housebreaking, in which the danger and the criminality bore hardly any similarity to each other, though, he is said to have added, the punishment was the same—namely, *transportation for life*. If his Lordship's words be correctly reported, he must, for the moment, have confounded *housebreaking* with the offence of *privately stealing* in the *dwelling-house* to the amount of £5. But as it is scarcely possible that he fell into this mistake, we presume, what he did say was, that it would not be consistent with reason or justice, if the Bill now before the House of Commons, to repeal the punishment of death for housebreaking, should, like the Bill applicable to the before-mentioned offences, of cattle-stealing, &c., enact the *same* punishment for *all degrees* of the offence. He will find, however, that it does not do so; that it leaves, very properly, a *judicial discretion* to deal with circumstances,

while it *fixes the bounds, beyond which it cannot pass either for severity or indulgence.*—*Morning Herald, Friday, May 3, 1833.*

Mr. LENNARD's Bill continued—Sir John CAMPBELL *instrumental to defeating one of its salutary provisions.*

The report of Mr. LENNARD's Bill to repeal the punishment of death for the offence of housebreaking (in cases that do not amount to burglary) is to be brought up to-day. It will be recollected that, when the Bill was first brought in, His Majesty's Solicitor-General* approved of its principle, as far as simple housebreaking was concerned; but objected to the extension of the principle to cases of stealing in the dwelling-house, where any person was "put in fear." The provision thus objected to, Mr. LENNARD has withdrawn; and we therefore presume that it will meet with no further opposition on the part of Ministers. If it should meet with opposition from that quarter, the inconsistency will be as remarkable as the spirit of hostility which it will evince to the most moderate measure for the further mitigation of the criminal code.—*Morning Herald, Monday, June 3, 1833.*

Opposition to Mr. LENNARD's Bill by Mr. George LAMB, Under-Secretary of State for the Home Department.

Who makes the first attempt not only to stop the progress of reform in the criminal law, but to turn back the Legislature from the road of improvement into the old track of barbarous legislation?—Some ancient inveterate Tory, whose prejudices incrust him like a coat of mail, on which the finest-tempered weapons of reason can make no impression?—No. Some Lawyer bred up under the exterminating system, to whom the judicial slaughter of his kind was as familiar, and as much in the ordinary course of business, as the killing of

* Sir John CAMPBELL.—See Note at page 60.

sheep to the butcher?—No. Some avowed infidel Legislator, who spurns the code of Christianity and its mercies, for that of Mammon, with its sordid doctrines, holding a little pelf more sacred than human life, scorning the moral reformation of guilty men, as something beneath the notice of one who has no faith in an accountable futurity—no belief in the immortal destinies of man?—No. The advocate for a return to the exploded notions of the British DRACO is neither an antiquated Tory, a veteran Lawyer, nor an avowed Infidel. He is, on the contrary, a regularly educated Whig—a gentleman who pretended, years ago, to have made some progress in the “march of intellect,” under the tuition of the “schoolmaster”—one, whose natural sentiments, whether of good or evil, are not overlaid by any encumbering mass of legal erudition—and, moreover, a professed Christian, though he, not long since, stood up in defence of those London “pastimes,” which are exercised at the expense of public morals and humanity. He is, besides, the representative of the HOME OFFICE in the House of Commons—and, what is more extraordinary, he is the identical George LAMB who obtained, once upon a time, the suffrages and most “sweet voices” of the Westminster electors, by representing himself to be “the friend of ROMILLY!”

Let us only imagine the spirit of that lamented advocate of the principles of enlightened legislation, to have returned to the scene of its earthly struggles against passion and prejudice, in behalf of the cause of civilized justice, and to have witnessed the debate upon Mr. LENNARD'S Bill for taking away the penalty of blood for the offence of entering a house in the daytime, and stealing any thing, whether the value were great or small—let us suppose, we say, that the spirit of ROMILLY witnessed that debate, and how bitter would have been his sensations, if spirits are capable of earthly feelings, to find that the only man who endeavoured to wheel round the Legislature from the career of amelioration on which he had himself induced it to enter—the

only man who openly avowed regret for having had any share in preventing the sacrifice of human victims on the Golgotha of vindictive justice, was one who emphatically styled himself his disciple—whose name stood rubric in the streets of Westminster, as the friend of the departed reformer of the law—a sufficient recommendation, until it was found not to be exactly true in a political sense; for that name carried him triumphantly through his first conflict for the representation of a popular constituency, so that he may be said to have come into Parliament under the protection of the shade of ROMILLY, immediately after that great man was prematurely lost to his country and to humankind.

According to the parliamentary report, this disciple and friend of ROMILLY, not content with opposing Mr. LENNARD'S Bill, which even the Solicitor-General supports, thought proper to travel out of the record to make an attack upon the Forgery Bill, the introduction and carrying of which through the legislature, the able and enlightened Sir Thomas DENMAN, now Chief Justice of the King's Bench, may, to the latest hour of his life, which we trust will be a long one, look back upon as a moral victory, that may well be a source of honest pride to a benevolent mind. Mr. LAMB is represented to have said that—

‘ He had, with others, voted for the abolition of capital punishment in cases of forgery, trusting that, as the capital punishment, in that instance, had, in deference to the feelings of the public, been for the last few years *virtually abolished*, its actual abolition would not lead to an increase of crime. He was sorry to say that he, in common with the House, had, as experience proved, acted in that case on a lamentably mistaken principle.’

If this means any thing, it must mean that the sanguinary laws against forgery were *effective*, although he admits they had been *virtually abolished* by public opinion, which would not allow them to be any longer carried into execution.—Was there ever such absurdity heard in this world!

Again, Mr. LAMB is reported to have said that—

‘ He was fully impressed with the conviction that the course of

‘legislation which they were now pursuing on this subject, tended much to the increase of the evil under which they laboured so extremely at present—namely, the multiplication of crime. There was no denying the fact, that there was latterly a great increase of crime. Let the House look at the effect of the course which it had adopted last year, in taking away the capital punishment from the crime of forgery.’

He then, after some other observations, went on to state, without fear of contradiction, that the crime of forgery had considerably increased during the past year. In support of this assertion, Mr. LAMB, with all the means of intelligence possessed by the HOME OFFICE, produced no proof, no documentary or other evidence whatever. We venture, hazardous as it may be, to contradict Mr. LAMB,* and the busy *little knot of Bank parasites in a certain quarter*, who are leaving no stone unturned, to have the blood-stained altars of the paper Moloch re-erected, to desecrate the temple of Justice, and defile the land.

We deny that the crime of forgery has increased. It was one of our arguments—as it was one of the arguments of every rational advocate of the repeal of the sanguinary

* If it was Mr. LAMB's immediate object to accede to the wishes of one or two *London Bankers*, he might have reminded them of the statement made in Parliament, while forgery was capital, by a Member of their body, which we now re-insert:—

‘Mr. John SMITH said that neither the House, nor the country at large, were aware of the numerous offences of this kind that were compromised and hushed up. Bankers were perpetually liable to the effects of this crime. They had, indeed, formed an Association, and appointed a Solicitor, for the prosecution of offenders [to death]; but they were very often moved by pity, and acted contrary to the principles of their Association.’—(*Debate in the House of Commons on Sir S. Romilly's Bill, Feb. 25, 1818.*)

Upon the subject of forgery, some important remarks appeared in the *Morning Herald* at a subsequent period. They are here sub-joined.—ED.

• • • We have examined the Parliamentary Returns, and are now enabled to give the following abstract of results. They present a

law—that such repeal would *increase the number of prosecutions*; because it would remove the repugnance to prosecute, which was so generally entertained of late years, while the punishment was capital—a punishment against the continuance of which upwards of *one thousand bankers* petitioned, as being wholly inadequate to protect their property from depredation—as it caused Prosecutors, Courts, Witnesses,

contrast which the public ought to see, but the inspection will create a thrill of horror :—

FORGERY—Two periods compared. ENGLAND AND WALES.	From Parliamentary Returns.		To these, add FORGERIES not prosecuted, having been <i>"compromised & hushed up."</i>
	<i>Executed.</i>	<i>Committed.</i>	
Five years, ending with 1820	94	645	<i>Multitudes.</i>
Five years, ending with 1835	<i>None.</i>	351	<i>None.</i>

In the five years ending with 1820, the executions for Forgery were more numerous than during any similar period from the year 1810, when the Criminal Returns commence, down to the abolition of the punishment of death for that offence (practically in 1830); and it is but fair toward the few remaining advocates of severity, to select, for the purpose of comparison, a period when their favourite instrument, the horrid scaffold, was in full activity. Certainly 94 executions for one offence, in the short space of five years, is no inconsiderable number; and, if it were true that the terrors of an ignominious death possessed extraordinary efficacy in restraining from crime, we should naturally expect to find the crime itself proportionably rare. The fact, however, is the reverse. To say nothing of the multitudes who then altogether escaped prosecution, because of the inhuman severity of the law, the committals, during the period when there were 94 executions—as proved by official Returns—were nearly double the number of those which took place during the last five years, when there was *no execution* whatever.

Can it be possible that the *Bank of England* wishes again the protection (such protection!) of the gallows? If so, what is to be said to the fact that the Bank had to institute, as shewn by Returns to Parliament, but *one* prosecution for forged notes in the whole of the year 1835; and in the preceding year only *two*?—Is it forgotten that in the year 1818 a Return was made to Parliament, shewing that the

and Juries, in most instances, to combine to evade the law of blood. One of the bankers who petitioned, at the time when "PEEL'S Bill" was under discussion, against its exterminating provisions, stated that he knew of *forty* cases of forgery in which the injured parties had refused to prosecute. Under the present law no such repugnance could be felt, and all those forty cases would have been brought before the public. Another banker stated that he "knew of" "innumerable cases in which no prosecution had followed;"—and it is this law, so terrible in theory, yet so despised and useless in operation, that Mr. LAMB would have revived!—We should like to see the Minister who, stepping beyond the shelter of general observation, would dare to propose a specific measure to that effect.

Well did Mr. BERNAL say—

'When his Honourable Friend stated the result of this alteration of the law in regard to forgery, he would beg to ask him whether, with his knowledge and experience on the subject, he was prepared to retrace the steps he had taken on that subject—whether, in fine, with the temper of the British nation, in 1833, any Government, or any gentleman, would be bold enough to come down to that House, and recommend that they should come back to the old code in regard to forgery?'

Bank prosecutions alone, in one year, had cost *thirty thousand pounds*, or about £265 for each prosecution? Was that immense sum expended without benefit to the receivers? Who were they? * Well might a writer in the *Edinburgh Review* exclaim, that they 'would have gone on to this day hanging by wholesale for the forgeries of Bank Notes, if Juries had not become weary of the continual butchery, and resolved to acquit.'—*Morning Herald, Saturday, October 1, 1836.*

Before leaving the subject of Forgery, we request the reader's attention to the extract taken from an Article in the *Edinburgh Review*, December 1818, upon the subject of Bank of England Prosecutions, and inserted in our First Volume, p. 10, *et seq.*—ED.

* A few years back there was a "*hushed up*" forgery of a Power-of-attorney, where the delinquent, a certain *Solicitor*, was one that, above all others, should never have been guilty of such a crime. Some of our City readers will understand who is meant.

Mr. HILL also truly observed that—

‘The feeling of the whole country was increasing against the continuance of sanguinary laws: that feeling could not be stopped, and the House must legislate for the feelings and disposition of the people.’

The fact is, that sanguinary laws become ineffective in proportion as people become civilized; because ignorance is necessary to preserve the veneration for barbarous institutions.

Even if the crime of forgery had increased, we deny the right of the Legislature, *therefore*, to offer *human sacrifices*. It should, indeed, induce the Legislature to seriously set itself to work, to devise *effective and judicious secondary punishments*—a duty which the American Legislatures have well performed, and by which they have greatly diminished crime, and especially that of forgery, which is now hardly known in some of the States where it was prevalent before. Mr. BERNAL touched the right key when he said that—

‘If they had to complain of the increase of crime, the fault lay with themselves—they did not adopt the proper preventives to check its increase. Let them but advert to the beneficial effects that had been experienced from the system of solitary confinement in the United States, and they would see what good might be derived from the adoption of a proper system of preventives.’

There are legislators who would hang men, to save themselves the trouble of devising rational means to repress crime. Mr. BERNAL is not one of them. They are a declining race.—*Morning Herald, Monday, June 17, 1833.*

The Housebreaking Bill continued.

The *Globe* mentions that Mr. LENNARD’S Bill to abolish the punishment of death for *burglary* in the daytime, passed through its final stage in the House of Commons. The error which confounds *housebreaking in the daytime* with *burglary*, ought to be corrected. There is not, and never was, such a crime known to the laws of England, as *burglary in the daytime*. It is of the essence of burglary that it should

be perpetrated *by night*, and night only ; so that if there be sufficient natural light, or twilight, to distinguish the features of the offender, he must be acquitted of the burglary. The latter was always considered a more heinous offence than mere housebreaking ; though the statute which Mr. LENNARD'S very judicious Bill goes to repeal, founded the punishment of the less crime with that of the greater.*—*Morning Herald, Friday, June 21, 1833.*

Presentation of the Petition agreed to at the GREAT MEETING, Exeter Hall, against the Punishment of Death, by HIS ROYAL HIGHNESS THE DUKE OF SUSSEX.—LORD LYNDEHURST'S renewed censure upon the indiscriminate severity of the HOME OFFICE, in punishing certain offences.

His Royal Highness the DUKE OF SUSSEX, as will be seen from our report, presented, in the House of Lords, last night, the Petition of the Inhabitants of London, against the punishment of *death*, agreed to at the great Meeting held on that subject at Exeter Hall last year.† A large proportion of the 5330 persons who signed the petition, were accustomed to serve on Juries, and therefore were well acquainted, by personal experience, with the practical operation of the laws

* The good effects of Mr. LENNARD'S Act in repealing the capital penalty for housebreaking, will be seen by the Parliamentary Returns we have given at p. 3, which indicate a great decrease in this offence.—ED.

† *Copy of the PETITION presented to the House of Lords, on Tuesday, the 7th of May, 1833, by HIS ROYAL HIGHNESS THE DUKE OF SUSSEX.*

To the Right Honourable The Lords Spiritual and Temporal of the United Kingdom of Great Britain and Ireland, in Parliament assembled :

The Petition of the undersigned Inhabitants of London and its vicinity, agreed to at a Public Meeting, held in Exeter Hall, on the 2d of June, 1832—

HUMBLY SHEWETH,

That your Petitioners are deeply impressed with the opinion, that the efficacy of criminal laws depends less upon the severity of

which they condemn. Many of the signatures were those of persons who suffered depredation of their property, and declined to prosecute, because they could not reconcile to their consciences the destruction of human life; and thus, in consequence of the sanguinary severity of the law, were left wholly unprotected.

punishment, than the *certainty* of infliction; and that laws, which cannot be carried into execution without shocking the feelings of society, and exciting sympathy for the offender, are contrary to reason, inconsistent with morality, and opposed to the interests of justice.

That the criminal laws of England are of a character so vindictive and barbarous, as to be utterly incapable of uniform execution; and that, consequently, under the present system, the lives of men depend—less upon the precise and express provisions of the law, than—upon the temper, feeling, or caprice of a *Judge*, or *Secretary of State*: whence it arises, that all the Assizes and Circuits throughout England afford examples of inequality of punishment, and practical proofs of the arbitrary discretion exercised in the selection of victims for the altars of sanguinary Justice.

That the excessive severity of the law operates to the total impunity of a great proportion of offenders, by deterring humane persons from prosecuting, and by holding out a temptation to Jurors to violate their oath, rather than be accessory to judicial murder,—while, almost all the capital punishments now on the statute-book, are innovations upon the temperate and wholesome principles of the ancient common law of the land, which had ever been admired for its humanity and wisdom by the greatest legal authorities, and is coeval with the noblest and best principles of the English Constitution.

That your Petitioners, therefore, humbly pray your Right Honourable House to take the Criminal Laws into your consideration, and—in accordance with what the true interests of justice, as well as of humanity, require—to introduce such a thorough and efficient reform of the criminal law, as will render it more auxiliary to public morals than to private vengeance; and, by a judicious system of prison discipline, afford that protection to property, of which all persons may avail themselves, without purchasing it by the sacrifice of human life.

Signed by 5300 persons, many of whom, in signing the Petition, stated that they had been robbed, and had refused to prosecute, thereby exemplifying in their own case the insufficiency of the laws to protect property.

On the occasion of this petition being presented, Lord LYNTHURST availed himself of the opportunity to advert again to the subject of Lord WYNFORD'S "amendments" to Mr. EWART'S Bill, which he had so properly, a short time ago, brought under the notice of the Legislature.

It will be recollected that Lord LYNTHURST complained of the indiscriminate manner in which the punishment of *transportation for life* was awarded to crimes against property of various degrees of legal guilt and moral delinquency. He had asked Lord MELBOURNE whether the one severe sentence, which the law inexorably directed the Judges to pass upon all persons convicted of cattle-stealing, horse-stealing, sheep-stealing, and stealing privately in the dwelling-house to the amount of five pounds, was in all cases carried into effect?—Lord MELBOURNE'S answer was not very explicit; but since then returns have been laid upon the table, from which it appears that out of 300 convicts so sentenced, the punishment has been mitigated in only ten cases.

Lord LYNTHURST strongly animadverted upon the undistinguishing severity of the practice now adopted at the HOME OFFICE, under a law which took away all discretion from the Judges, and left them no power to mitigate the sentence, whatever might be the extenuating circumstances of the case. His Lordship emphatically described this mode of proceeding as "a harsh and unjustifiable administration of criminal law." He observed, that, as the law now stood, *privately stealing in a dwelling-house* was often punished more severely than when that offence was coupled with the additional one of *housebreaking*. For, though the latter offence is at present *nominally* capital, the Judge has the discretion, which he used to have in most other cases, of mitigating the sentence, by marking an inferior punishment in the margin of the calendar. So it not unfrequently happens, that while the sentence of transportation for life is carried into effect against a person convicted of *privately stealing in the dwelling-house*, the *housebreaker* receives

but a year's imprisonment. He suggested to the Noble Secretary for the Home Department, to bring in a Bill to remedy this defect; and inquired why it was that he had not imitated the example of Sir Robert PEEL, his predecessor in office, by personally exerting himself to accomplish a reform of the criminal law, of which the Right Hon. Baronet had laid the foundation?

For our own part, we should like to see a Home Secretary undertake a task so worthy of an enlightened and comprehensive mind; but we are quite sure Lord MELBOURNE is not the man who possesses the talents or intelligence which a task of such importance demands. He has not, indeed, evinced any laudable ambition to be useful in this way. The only specimen of criminal legislation by which we recollect his official genius to have distinguished itself, was the abortive labour of the Spring-gun Bill, which was calculated to work any thing but a reform of the exterminating system. The reform of which Sir Robert PEEL laid the foundation, we have, on other occasions, criticized. It was not such as could, or ought, to satisfy an enlightened people. It was not begun on the right principle: still the Right Hon. Baronet was ambitious of doing something that he hoped might obtain for him the reputation of a reformer of the criminal law. This evinced, at least, some deference to public opinion. But Sir Robert PEEL is so superior a man to Lord MELBOURNE, that it may seem ridiculous to institute any comparison between them.

Lord MELBOURNE was indignant with Lord LYNCHURST for holding up to public censure the practice now pursued at the HOME OFFICE, under enactments which the latter described, not as part of a new and rational system, but as an absurd anomaly in the Constitution. The Home Secretary said that Lord LYNCHURST had spoken of a harsh and unjustifiable exercise of the prerogative of the Crown. The latter set him right, by stating that his words only applied to the "administration of the law;" and he said that certainty

of punishment was not the only thing to be looked to: it was as necessary that punishments should be *just and proportionate* as that they should be certain.

Beaten in the field of argument, the Home Secretary had recourse to declamation. He deprecated, in vehement terms, the "agitation" of questions of criminal law, whereby the course of justice was interfered with, and brought into public disrepute. But if it had not been for the public agitation of such questions, the law would have remained as brutal and barbarous as it was in those "glorious days" of penal legislation, when the Statute-book of England contained upwards of *two hundred* offences punishable with *death*! When Lord WYNFORD proposed those amendments of which Lord LYNDEHURST has shewn the cruel absurdity, the Premier,* the Home Secretary,† and the Lord Chancellor‡ all supported them; but now the latter Noble and Learned Lord very candidly admits that the statements and reasons which he has since heard, have shaken his opinion, and that the subject is one which requires reconsideration.

While upon the important question of the reform of the criminal law, we may as well observe, that Mr. LENNARD's Bill to repeal the penalty of death for the offence of house-breaking, is to be read a second time to-day. We explained the Bill, and examined its merits, when we alluded to it on a recent occasion. There also stands for discussion this day Mr. EWART's Bill, to allow Counsel to speak for prisoners accused of felony, or, in other words, to allow such persons to make their *full defence* by Counsel, as is the case under all indictments of treason and misdemeanor. Mr. LAMB and his Whig friends made great efforts to have a similar measure passed seven years ago, in an unreformed House of Commons. In a reformed House of Commons, Mr. LAMB, who is now in office, and whose Whig friends can command majorities, has declined to undertake the task. It does not,

* EARL GREY. † LORD MELBOURNE. ‡ LORD BROUGHAM.

perhaps, suit him to "agitate" this question when he has the means of carrying it. Still, we cannot anticipate that so reasonable and just an alteration of the law will meet with successful opposition. When the Bill goes into the Upper House, as we confidently expect it will, we anticipate that Lord LYNDEHURST,* who has so decidedly declared himself against absurd and disgraceful anomalies in the law, will give it his cordial support.—*Morning Herald, Wednesday, May 8, 1833.*

Case of Job Cox, the letter-carrier, ordered for execution by a mistake of the late RECORDER of London.

On the authority of the RECORDER's report to THE KING IN COUNCIL, an abstract of which was published in the *Morning Papers* of yesterday—in ours among the rest—it was announced that *Job Cox*, the letter-carrier, who had been convicted of stealing a letter containing a five-pound note, was ordered for execution on Tuesday next. The weighing the paltry sum of £5, at the present day, in the scales of justice against human life, and allowing it to preponderate, did, we confess, excite our astonishment, and we were preparing to shew how bad in principle, how mischievous in consequences, such an act of extreme severity as confounded a bare theft of a few pounds with deliberate murder, would be, when we found that the statement contained in the RECORDER's report was denied to be correct.

In a Ministerial Evening Paper (the *Globe*) appeared the following paragraph, the substantial part of which was confirmed by an official statement which we received from Newgate:—

' We have authority to correct an erroneous statement made

* In this anticipation as to the course Lord LYNDEHURST might be expected to adopt, the writer was not mistaken.—See ante p. 78; also *Articles from the Morning Herald of June 16, 1836, and subsequent dates.*

‘in the Papers of this morning, that *Job Cox*, upon whom sentence of death was passed at the last Old Bailey Sessions, for stealing money from a letter, was to be executed on Tuesday next. At a Council held at St. James’s, yesterday, HIS MAJESTY was pleased to commute *Cox’s* sentence to transportation for life, after a previous imprisonment of one year to hard labour, for three months of which period he is to be kept in solitary confinement at different intervals.’

Now, we ask, who was the author of the “erroneous statement?” Certainly not the newspapers, which received, as usual, the copy of a document deemed to be official in such cases. It could hardly be through the wicked collusion of those vehicles of daily intelligence, that a *warrant*, purporting to be that of the RECORDER, and ordering the prisoner’s execution on Tuesday next, was lodged with the Governor of Newgate. It is equally difficult, perhaps, to believe it was through the contrivance of the newspapers that the High Sheriffs of London, Messrs. PEEK and HUMPHREY, were on Wednesday evening labouring under the painful impression that if some effectual expression of public opinion, either in or out of Parliament, against the sacrifice of life for a comparatively petty theft, did not take place, they would have to perform the disgusting duty of presiding at the oblation of blood. If, then, the newspapers did not *forge* the RECORDER’s *warrant*, we presume it is of some public importance to ascertain by what agency a document was fabricated, and lodged where authentic documents of that description are always deposited, to take away the life of a fellow-creature, to whom the *Crown* had already extended its clemency.

Let us only suppose that the contents of the spurious document had not been announced through the Press. No contradiction would have followed, because there would not have been any known error to contradict. The Sheriffs, unless the matter reached the ears of Government in some other way, would have come on Tuesday morning to demand

the body of the prisoner, whom the Keeper of Newgate must have delivered up; and the contradiction which has now saved the man's life, would then have followed his execution. What a consolation to his family and friends it would have been to hear that he was hanged by a *mistake*! Is not this a subject that *demand*s enquiry?

Let us say a word as to the actual punishment. We are glad to see that Government has taken a hint from Mr. LENNARD'S Bill, which, in repealing the penalty of death for housebreaking in the daytime, makes the *maximum* of punishment, transportation for life, preceded by a certain term of imprisonment and hard labour. In the present case there is also to be a term of three months' *solitary confinement*; and surely, taking the whole of this sentence into consideration, there is no person, who can feel or reason like an intelligent being, that will not regard it as a sufficiently severe sentence for the crime—a better protection to property conveyed by post, than the revolting sentence which takes life, while there is also the probability that it may induce the culprit to reflect and reform.

We have always contended that the reliance which was placed for many years past upon the mistaken efficacy of capital punishments in protecting property, caused the most obvious and rational modes of preventing crime to be neglected:—witness the Bank of England, whose clumsily-executed Notes the most bungling engraver could successfully imitate; and the consequence was, that while the Bank used to hang up men in dozens for forging their one-pound Notes, the forgery of those Notes rapidly increased,* until London Juries at last sickened at the work of blood, and refused to convict!†

Now, as to letter-carriers, if they were obliged to give *good and sufficient security* before their appointment, that the public should sustain no loss by any default of theirs,

* *Ante*, p. 109.

† *Ante*, p. 110; and Vol. I., p. 13.

the individual who transmitted money by letter, could be indemnified out of a fund thus ensured to make good such losses as occurred through the default of the letter-carrier; and, moreover, a condition of this nature would afford something like a *guarantee* for the good character of the person appointed—as a person of bad or doubtful character would not easily find friends to enter into such a security for him. At present the persons appointed to this office are only required to give a *small security to the Crown*, but *none to the public*. Let the precaution which we suggest be taken, and it will be more efficacious in preventing the crime of stealing from letters than capital punishment. He whose property is stolen, is none the better for the blood of the offender—*restitution is to be preferred to revenge*.—*Morning Herald, Friday, June 21, 1833.*

Case of Job Cox continued—The RECORDER of London, alarmed by the indignant feelings of his fellow-citizens, resigns his judicial office.

THE RECORDER OF LONDON,* by submitting to the sentence of PUBLIC OPINION, and resigning his judicial office, has made it unnecessary to address THE THRONE on his conduct. The indignant feelings of his fellow-citizens, in relation to the case of *Job Cox*, were so unequivocally expressed in his own hearing at the Common Hall, on Monday, that he could no longer entertain any doubt that, in sealing the document which was to authorize the execution of the pardoned convict, he had sealed the death-warrant of his own official existence. His unexplained conduct on a former occasion, in keeping back the report of the fate of the convicts a day longer than he ought, had been abundantly animadverted on in the Public Press; but, although a notice of motion on the subject was given in the

* The late Newman KNOWLYS, Esq., who survived this occurrence but a few months.

Common Council, it never came under discussion; the thing was, somehow or other, hushed up, and never received that formal censure of the Corporation, whose officer the **RECORDER** is, which might have had the effect of making him more careful to avoid mistakes in future—at least such mistakes as inflict unnecessary pain even on criminals, and render sanguinary law still more revolting than it is; for we never heard of his having made a mistake on the side of mercy.

Although **MR. LAMB**, when the case of *Cox* was brought under his notice in the House of Commons by **SIR S. WHALLEY**, expressed himself as if he thought the “awful mistake” must eventually have been detected, yet we still continue to hold the opinion, that if it had not been for the publication of the dreadful order in the Press, and the vigilant humanity of Chief Justice **DENMAN**,* the mistake

* We would direct attention to an advertisement in our Paper this day, from the Society for diffusing Information on Capital Punishments.† The advertisement conveys the thanks of the Society to the Lord Chief Justice of the King’s Bench, for “his prompt and humane interference” in the case of *Job Cox*, the respited convict. It must be gratifying to the Lord Chief Justice to receive the acknowledgments of so enlightened a body, on such an occasion, and to know that they are shared by every individual in the community, from the highest to the lowest. What a contrast between his position at this moment, and that of another legal functionary, whose “occupation’s gone.”

† At a Meeting of the Committee of the Society for diffusing Information on CAPITAL PUNISHMENTS, on Tuesday, June 25, 1833—

WILLIAM ALLEN, Esq., F. R. S., in the Chair,

It was Resolved—That the Thanks of this Committee be presented to the Right Honourable **SIR THOMAS DENMAN**, Lord Chief Justice of the Court of King’s Bench, for the prompt and humane interference by which he averted the consequences of the extraordinary error committed by the **RECORDER** of London, in lodging a warrant for the execution of *Job Cox*, to whom, but for the timely interposition of his Lordship, the Royal clemency would have been extended in vain.

Resolved—That the foregoing Resolution be published in the Morning Herald, Times, Standard, and Courier Newspapers.

(Signed) **W. B. SARSFIELD TAYLOR**, Hon. Sec.

might not have been discovered until the execution of the RECORDER'S warrant had made the error *irreparable*. It is quite clear that neither Lord MELBOURNE nor Mr. George LAMB was at all instrumental in detecting the mistake. As far as the activity and vigilance of the Home Office were concerned, the spurious warrant for the sacrifice of human life might have had all the fatal effects of a valid instrument.

The public in general are, perhaps, not aware of the sort of formal procedure which constitutes the legal authority for the taking of human life at the Old-Bailey. It is done in this way:—the Recorder waits on THE KING IN COUNCIL with the report of the convicts under sentence of death. It was the popular and erroneous notion that THE KING himself signed the death-warrants of those criminals to whom mercy was refused. Not so. The RECORDER takes, or is supposed to take, the orders of THE KING IN COUNCIL with regard to the convicts, whose sentences of death, previously pronounced at the Old-Bailey, are commuted or confirmed. With regard to the latter, he writes out his warrant in his own hand (no printed formula being used on this occasion), and seals it with his own *black seal*. This instrument he does not dispatch to the Sheriffs, whose duty it is to see it carried into effect; he merely *deposits it with the Governor of Newgate*. The latter, on receiving the instrument of death, writes a note to each of the Sheriffs, who thereupon come to Newgate, and satisfy themselves of the authority on which they are to act, by inspecting the warrant lodged there. Now all this appears to us a very circuitous and clumsy mode of carrying the law into effect, and ought to be reformed.

The Sheriffs, having inspected the warrant, and being satisfied that it is under the hand and seal of the RECORDER, attend on the day specified in the document, and demand of the Keeper of Newgate the body of the offender. In the case of CAR, the Sheriffs, Messrs. PEEK and HUMPHREY, had received the notification from the keeper of the prison, of the warrant having been lodged, had inspected that warrant,

and been *satisfied of its authenticity*, although they were exceedingly dissatisfied with the apparent confirmation of the capital sentence for a case of mere theft, and that too of small amount. But they never doubted the correctness of the warrant until Chief Justice DENMAN detected and exposed the "mistake." His Lordship has, undoubtedly, the credit of saving the life of the prisoner; but we doubt that the public would ever have been made acquainted with the exact circumstances of the case, *if we had not published the fact of a death-warrant having been lodged in Newgate in the usual way, although the Royal clemency had been extended to the culprit.*

The disclaimer of Government was so worded as to impute indirectly to the *Newspapers* which published the RECORDER's report, the origin of the *erroneous statement*.

As to the official report from Newgate, which was sent to the newspapers on Thursday night, it was expressed in the following words:—"A respite during His Majesty's "pleasure for *Job Cox*, who was ordered for execution on "Tuesday, arrived at Newgate yesterday evening." It is evident that this communication was intended to screen the RECORDER, while it announced to the public that *Cox* was not to be executed. It did not let out the secret that there had been an "awful mistake" in the warrant:—far from it: the document was treated as a valid one, by saying that a respite, *during pleasure*, had arrived to stay its execution. There could be no need of a respite to stay the execution of a warrant which was in itself a *nullity*. But this supposed respite was necessary to cover the sad work which the RECORDER had made with the decision of THE KING IN COUNCIL. Are we not, therefore, justified in saying that there is a great probability the matter would have been hushed up, if we had not published all we knew respecting *the warrant and its black seal*?

The next thing to be considered is the choice of a successor to the late RECORDER. We presume the Hon.

Mr. LAW,* the present Common Serjeant, will be appointed to that office, more especially as the election we believe is in in the Court of Aldermen. It has happened, unfortunately enough for the judgment and discrimination of the Civic Body, that several of the Recorders of London have been among the most sanguinary of the administrators of the criminal law that this country ever produced. An Evening Contemporary connects the name of Mr. Newman Knowles, the late RECORDER, with the melancholy fate of *Eliza Fanning*, whose case excited so much public sympathy several years ago, and who, upon strong grounds, is believed to have perished innocently. It was, however, under the jurisdiction of the former RECORDER, SYLVESTER, that she suffered.

We have not heard of Mr. LAW rendering himself obnoxious to public opinion by any harsh, or oppressive, or partial exercise of his judicial authority since he became Common Serjeant. He had before him the admirable example of the late Common Serjeant (now Chief Justice) DENMAN, whose dignified conduct and courteous manners formed so exalted a contrast to the judicial deportment of some late Recorders of London. Mr. LAW can make no mistake if he carries into a higher office the advantages of that example.—*Morning Herald, Wednesday, June 26, 1833.*

Case of Lloyd, Newell, and Marsden, left for execution at the Northampton Assizes, for highway-robbery.

At the Northampton Assizes three young men, named *Lloyd, Newell, and Marsden*, convicted of a highway robbery, have been left for execution. Their case presents no feature of peculiar atrocity. Their violence consisted in dragging the prosecutor off his horse, and holding him on the ground while the robbery was committed. While attempting to resist, he was kicked on the side; but it does not appear that, beyond the indignity, any personal injury was inflicted.

* Hon. C. E. LAW, who was elected upon this occasion to the important office of RECORDER of London.—*Ante*, Vol. i. p. 264.

The persons, indeed, made use of very violent language ; but hard words are not hard blows. The culprits carried no deadly weapons, nor is it alleged that they carried weapons of any sort. They had life in their power, and they spared it—even the life of him who was the only witness of their crime. By the commission of a greater crime, they might have destroyed all evidence of the lesser one. Under such circumstances, we ask if the law which sacrifices the life of the criminal, ought to be carried into effect ? We impeach not the evidence—we make no question of the guilt :—two of the prisoners, indeed, pleaded guilty, and were also convicted of another robbery, but unattended with any violence, on the same day.

We put our objection to the extreme enforcement of the law, on the ground of public policy, which does not sanction the confounding of robbery with murder ; for that would be to offer a bounty on the crime of blood, and instigate the robber to make sure work of his victim, by silencing his voice against him before any earthly tribunal for ever.

If we err in taking this view of the subject—a view which we have not taken of a sudden, nor adopted without consideration, it is consolatory to us to know that we err in company with not a few of those gifted minds, whose progress through our system has been equally splendid and beneficent, and who have left behind them a long train of intellectual glory.

We have often quoted arguments in support of our opinions from MEREDITH and ROMILLY—illustrious names among the more modern reformers of our criminal jurisprudence, which, though considerably improved of late years, still merits the disgraceful distinction of being the most sanguinary, not only in Europe, but in the civilized world. Let us now revert to older, but not less zealous—not less glorious advocates of dispassionate and Christian legislation.

The great moralist, Doctor JOHNSON, has handled this

subject, as he did every question of which ethics formed a part, with masterly force of reasoning, and captivating beauty of expression.

‘The terror of death,’ says this eloquent teacher of wisdom and virtue, ‘should be reserved as the last resort of authority, as the strongest and most operative of prohibitory sanctions, and placed before the treasure of life, to guard from invasion what cannot be restored. *To equal robbery with murder is to reduce murder to robbery—to confound in common minds the gradations of iniquity, and incite the commission of a greater crime to prevent the detection of a less. If only murder were punished with death, very few robbers would stain their hands with blood! But when, by the last act of cruelty, no new danger is incurred, and greater security may be obtained, upon what principle shall we bid them forbear? The gibbet, indeed, certainly disables them who die upon it from infesting the community; but their death seems not to contribute more to the reformation of their associates than any other method of reparation. A thief seldom passes much of his time in recollection or anticipation; but from robbery hastens to riot, and from riot to robbery: nor when the grave closes upon his companion, has he any other care than to find another.*’

Again—

‘He who knows not how often rigorous laws produce total impunity, and how many crimes are concealed and forgotten, for fear of hurrying the offender to that state in which *there is no repentance*, has conversed very little with mankind. And whatever epithets of reproach or contempt this compassion may incur from those who confound cruelty with firmness, I know not whether any wise man would wish it less powerful or less extensive.

‘The frequency of capital punishments *rarely hinders the commission of a crime*, but naturally and commonly prevents its detection, and is, if we proceed only upon *prudential* principles, chiefly for that reason to be avoided. Whatever may be urged by casuists or politicians, the greater part of mankind, as they can never think that to *pick the pocket*, and to *pierce the heart*, is equally criminal, will scarcely believe that two malefactors, so different in guilt, can be justly doomed to the same punishment; nor is the necessity of submitting the conscience to human laws so plainly evinced, or so generally allowed, but that the pious, the tender, and the just will

‘always scruple to concur with the community in an act in which their private judgment cannot concur.’—(*Rambler*, No. 114, April 20, 1751.)

Let us look to the opinions of another great man—a much more ancient advocate of the reform of our criminal law—a man who held the office of Lord Chancellor of England three hundred years ago, and who laid down his own head on the block, rather than violate the dictates of his conscience—we mean, of course, Sir Thomas MORE. What does he say?—

‘It is obvious that it is absurd, and of ill consequence to the commonwealth, that a thief and a murderer should be *equally* punished; for if a robber sees that his danger is the same if he is convicted of theft as if he were guilty of murder, this will naturally incite him to *kill* the person whom otherwise he would have *only* robbed—since, if the punishment is *the same*, there is more security, and less danger of discovery, when he who can best make it, is put out of the way; so that *terrifying thieves too much provokes them to cruelty.*’

This was exemplified in France, when, with a view of more effectually intimidating robbers, they were broken alive upon the wheel. The consequence was that they became desperate and ferocious as wild beasts, and delighted in murdering the victims whom they robbed, with the most revolting circumstances of torture and barbarity.

We want space to quote the opinions of such enlightened men as Archbishop MORETON, Sir Edward COKE, the great luminary of the law, and the unrivalled BACON, the father of modern philosophy, and Lord Chancellor of England, who exclaimed, “Let there be no rubrics of blood.” Little, stunted, and pedantic minds may boast of the ruthless bigotry with which they adhere to laws that are equally vindictive to punish crime, and inefficient to protect property: we prefer the doctrines of passionless justice, consecrated as they are by the advocacy of exalted genius. But it may be said *the laws* are sanguinary—must they not be executed? We answer, the *prerogative of mercy* is depo-

sited with the Crown to correct sanguinary laws; and mercy is, therefore, as much a part of the law as any enactment in the Statute-book.*—*Morning Herald, Saturday, July 13, 1833.*

Singular case of Mary Wright, convicted of Murder at the Norwich Assises, and subsequently respited.

An extraordinary and revolting execution is to take place at Norwich, next Saturday, if the circumstances described in another part of our Paper, and those to which we shall presently advert, should not be deemed sufficient to warrant a commutation of the sentence.

Our readers may remember that at the Spring Assises in that City, a woman named *Mary Wright*, suspected of having, on the 30th of November last, administered poison to her husband and her father, who both died at the same time, was tried upon the former charge, and was convicted.

In the sequel of this trial the prisoner's Counsel, as will be seen on reference to another of our columns† this day,

* The three convicts in question were subsequently reprieved.

† THE CASE OF MARY WRIGHT, AT NORWICH.

We have received the following extract, taken from a letter written by a surgeon, residing near Norwich, to his friend in London, and dated 2d August, 1833:—

‘My dear Sir,—I feel very doubtful whether I am doing right in endeavouring to call your attention to the enclosed case, occupied as you are; but you will, I trust, excuse it. The history of the woman you have doubtless heard. The medical statement, in opposition to the verdict of the ‘Matrons,’ has been verified by a living child, born the 11th of July, which was immediately removed from the mother. Her sufferings were prolonged very greatly by the anxious state of her mind. This poor creature, after enduring that state of mind consequent on her condemnation, from March to August, (a tremendous duration of punishment in her situation,) is now doomed to suffer death on Saturday, the 10th instant, if means cannot be found for

prevailed with the Learned Judge on the trial to disregard the verdict of the "Jury of Matrons." The sentence con-

'obtaining a mitigation of her punishment. A strongly worded petition from Norwich is, or ought to be, in London this morning. I write to you, my dear Sir, that, if you have time, you may use your influence in forwarding its object, if possible. It will be, without exception, the grossest barbarity if this woman suffer—to make a female an absolute machine to bear the child, then hang her! That this case must lead to an alteration in the existing law, as respects a Jury of Matrons, is beyond a doubt.'

For the elucidation of the above we give the following extract from the Judge's charge to the Jury, with the proceedings of the Court, as published in the *English Chronicle* of the 28th March.

NORFOLK CIRCUIT.

NORWICH, Friday, March 22, 1833.

CASE OF MARY WRIGHT.

[Mr. Baron BOLLAND concluded the summing up the case, as follows:—]

—'As to the second point, there was no direct proof of the prisoner having administered the poison to her husband in a cake or otherwise, or of her having made any cake at all. She had, indeed, bought currants, and spoke of buying suet for a cake, and currants were found in the stomach of the deceased. She had also used contrivance in procuring the arsenic, and made false statements regarding it; but it was for the Jury to say whether those circumstances were strong enough to bring the guilt home to her. If they should be of that opinion, their next consideration would be whether she was of sound mind when the act was done; for her Counsel, in taking this line of defence, did not thereby admit that the administration of the poison by the agency of the prisoner was proved. But, supposing that proved, then the state of her mind was to be taken into account. They had acts spoken to by one witness, which, relying upon the evidence of that witness, were undoubtedly the acts of a person of deranged intellect; but there is no proof of that derangement continuing after Michaelmas, and the death of the prisoner's husband did not take place until the beginning of December. The prisoner's mother had been insane, and there was no doubt that madness was sometimes hereditary. The prisoner's derangement, however, followed her delivery, and

sequently, instead of being executed within forty-eight hours, was respited till after the birth of her child, should it prove

‘that sort of derangement was not uncommon, where the illness was severe, though it was *almost* always temporary. Still it was for them to say whether the unsoundness of mind which existed then, continued down to the commission of the act charged, though there was no proof to that effect: if so, they would acquit the prisoner on that ground. But if they were of a different opinion, and believed the prisoner was not only the person who administered the poison, but that she had sufficient moral sense of right and wrong to make her accountable for her actions, they would do their duty with firmness, and say so by their verdict.’

The Jury, after consulting about twenty minutes, returned a verdict of *Guilty*.

The Learned Judge put on the black cap, and in an impressive manner addressing the prisoner, pronounced the awful sentence of her execution on Monday next (25th March).

Mr. Sydney TAYLOR then moved a stay of the execution, on the ground of the prisoner’s pregnancy.

The COURT ordered a *Jury of Matrons* to be impannelled to try that plea.

Twelve married women were then impannelled, *de circumstantibus*, and, being called into the Jury-box, were sworn to try whether, in the language of the law, “the prisoner was with child of a *quick* child or not.”

A bailiff being sworn to attend upon the female Jury, they retired from the Jury-box, along with the prisoner, into a private room, to be “without meat, drink, or fire, except that of a candle, until they agreed upon their verdict.”

After the lapse of more than an hour, the Jury of *Matrons* returned into Court, and gave as their verdict that they “Did not find the prisoner pregnant of a *quick* child.”*

The Forewoman of the Jury, in delivering the verdict, in the words of the ancient formula, pronounced with emphasis the word “*quick*.”

Mr. Sydney TAYLOR immediately observed to the Court, that the notion of the child becoming “*quick*” at a particular time, upon

* We have obtained a fuller report of what followed the verdict of the Jury of *Matrons*, than the abridged account which appeared in the *Herald*. It is inserted above.—ED.

that she was *enceinte*; and thus the unhappy woman became doomed to suffer for several months the anguish of her

which the old law was founded, was an ancient error, which the progress of science in modern times had exploded, and the best medical Jurists repudiated. He thought from the manner in which the verdict of Matrons was given, that they did not intend to negative the pregnancy, but only to deny that the child had "quickened," according to the usual indications.—There was high authority in modern science for believing that the living principle existed anterior to such outward indications.

Mr. Baron BOLLAND.—I have done all that the law empowers me to do : I don't see what more I can do.

Mr. TAYLOR.—The law gives your Lordship a discretionary power to stay the execution, even in a case of murder, if there should be a danger of any fatal mistake. I am sure I need not press upon your humane mind the propriety of acting upon that discretion, if there should be the most remote danger of confounding innocent life in the punishment of guilt. Surely it is more safe to act upon the opinions of medical men, than upon those of unlearned women.

Mr. Baron BOLLAND.—At present I can do nothing more ; but I will take the subject into consideration.

The next morning, upon the sitting of the Court, the Learned Judge, addressing Mr. Sydney TAYLOR, informed him that he had taken into consideration the suggestion which he had made in relation to the finding of the Jury of Matrons, in the case of the prisoner *Mary Wright*—that in the course of that evening he had communicated upon the subject with three eminent medical practitioners in Norwich—the result of which communication was, that he had determined to stay the execution.†

Mr. TAYLOR asked whether his Lordship meant to stay the execution to any precise time, or generally ?

Mr. Baron BOLLAND said, "generally."

Previously to the next assizes, and a short time before them, an event happened which fully established the fallacy of the old women's verdict, and confirmed the propriety of the Learned Baron's humane

† The medical gentlemen whom the Learned Judge consulted, and who made affidavits upon personal examination of the prisoner's state in the evening of the day of trial, were Mr. CROSS, Mr. SCOTT, the surgeon of the gaol, and another gentleman, whose name is not at this moment recollected.

peculiar situation. Her *accouchement* took place last month, and the law now demands her life. The question arises, how far her previous sufferings will satisfy that law ;—or whether, in this “*Christian land*,” the mother of a new-born infant shall—in the light of the nineteenth century—be suspended on a gallows for the edification of the multitude?

Besides the absence of all *motive* for such a murderous

decision :—that was, the delivery of *Mary Wright* of a fine child—a girl. This hardly requires any comment. Had the mother suffered the penalty of the stern law at the time when the law demanded the sacrifice, it is quite clear that at least *one murder* would have been committed in *avenging another* ! In fact, at the time when the Jury of Matrons pronounced her to be “not pregnant of a quick child,” she was so far advanced in her pregnancy, that had she been led to the scaffold, one of the most horrible spectacles would thus have been presented to the public eye, that ever offended public decency, and shocked the human heart.

But the result shewed, that, if the law had been carried into execution, instead of *one murder*, *two* would have been committed. The unfortunate woman had been delivered but a short time before the next assizes, consequently, was not in a state to be sent to the scaffold, or brought to the bar, as, according to very old authority, is the proper practice in such a case, to be asked if she had any thing further to state why the sentence of the law, which had been formerly pronounced and stayed, should not be carried into effect ? At the assizes her Counsel had had a communication with her Solicitor, Mr. WITHERS, to whom he expressed his conviction of the woman having been insane, and the propriety of exertions being made between that time and the ensuing assizes to obtain evidence to that effect, to be laid before the Secretary of State for the Home Department. The Solicitor expressed his readiness to make the necessary enquiries, being of opinion that the poverty of the woman, and the distance of the village in which she lived from Norwich, had deprived her of witnesses by which her insanity, down to the time of the administering the poison, would have been established. He had ascertained that the witness named *Stafford*, who had been called to carry the case of insanity down to a later period than the woman who had nursed the prisoner in her *accouchement* was competent to speak to, had been prevented by illness from attending the assizes, and that other persons did not come, because

deed, there was another argument urged by the prisoner's Counsel in the cross-examination—no speech being allowed for the defence—namely, the high probability that this woman was *at the time* the subject of a paroxysm of *insanity*; and to this, it will be seen, the Learned Judge, in summing up, particularly alluded. That *a few weeks before* she was certainly labouring under mental derangement, was clearly

they could not afford to leave their daily employment, and travel twenty-four miles to the assize-town, there await the trial, and travel back again at their own expence. In the meantime Mr. Joseph John GURNEY, of Norwich, the benevolent and much-respected member of the Society of Friends, communicated with Mr. Sydney TAYLOR on the subject, and offered to pay all the expences of the proposed enquiry: this gentleman, also, we believe, put himself in communication with the Home Secretary (Lord MELBOURNE) on the subject.

The Solicitor lost no time in making the necessary enquiries; and some time before the next assizes, was enabled to furnish the Home Office with abundant proof of the insanity of the poor creature, *down to the day* of the lamentable occurrence for which her life had been forfeited to the law: he sent copies of these affidavits to the prisoner's Counsel, who addressed a written argument upon the contents of them to the Home Secretary.

The decision of Government was favourable to the prisoner—she was ordered to be relieved, on condition of being transported for life, which it should be observed was somewhat novel practice, it being usual, in such cases, to order the lunatic to be confined during His Majesty's pleasure. But to prevent what, under the circumstances, would have been a judicial murder, was the great object, and that was accomplished. The unfortunate woman, however, died in prison, previously to her intended removal for transportation. Under the moral treatment and wholesome regimen which she received in gaol, greatly aided by the judicious advice and assiduous instructions of the excellent Chaplain, the Rev. Mr. BROWNE, her mind became quite composed subsequently to the excitement of the trial; she seemed even sensible of the blessing of religious consolation, and finally appeared to depart in peace. Her child, so providentially snatched from a horrible participation in the intended doom of the wretched mother, is still alive; a living example, it may be well said, of the fallibility of judicial tribunals, and the danger to which innocence is exposed from laws of blood.

established in evidence ; and this might possibly have been proved to be the fact at the time of the crime, had not her husband and her father died. We cannot help hoping that the advisers of the Crown will see it right to adopt this view, and direct the convict to be placed in custody for life, as is usual in cases of this melancholy description.—*Morning Herald, Monday, August 5, 1833.*

Case of William Jolly, sentenced to death at the Assizes, Bury St. Edmund's, for Arson.

At the late Assizes of Bury St. Edmund's a labouring man, named *William Jolly*, was convicted of setting fire to a wheat-stack, and left for execution. The evidence was circumstantial, and so far from being conclusive, that the Jury took a considerable time to deliberate on their verdict, and perhaps might not have found him guilty, if they had not believed that, by adding to the verdict a *recommendation to mercy*, they could prevent the sacrifice of his life. The Court accepted the penal portion of the Jury's decision, but rejected what was merciful. It is true, the recommendation of a Jury has not the force of law ; but its moral effect, in cases of life and death, ought to be sufficiently potent to arrest the arm of the executioner. The Jury, let it be borne in mind, are emphatically called, in the language of the law, "the country." The verdict of the Jury is the verdict of the country ; and no less certain is it that the recommendation to mercy by the Jury is the recommendation of the country. It is the country which tries and convicts—that in the same breath gives its opinion that, taking all the circumstances into consideration, the case is not one in which justice demands a sacrifice of blood.

Is it right, we say, that a Judge should wholly despise and reject, on his own individual responsibility, the solemn remonstrance against the sanguinary enforcement of the law of the twelve sworn Jurors ?—for, in giving their opinion in

favour of a mitigation of the penalty of the law, they are upon their oaths, as well as in giving their verdict. In the present instance, the recommendation of the Jury ought to have peculiar weight, inasmuch as it is the recommendation of a *Jury of Farmers*, to save the life of a man convicted of setting fire to *farming produce*. The farmers wish to protect their property by more rational, less revengeful, and more effective punishments than those which take *life*. They know that in a penal colony the labour of a man whom distress and pauperism have driven into crime, (supposing him guilty,) can be turned to some public account. He may there have an opportunity of reforming; and, at all events, the society from which he is banished will be as much benefited by his absence as by his death. His blood will not compensate the loss of property, nor prevent stack-burning. If sanguinary punishments had a beneficial effect, the number of executions for *arson*, which have taken place throughout England during the last three years, would have exterminated the crime.

If *Jolly* really committed the crime for which he is doomed to suffer death, he certainly committed it under circumstances which neither endangered, nor could endanger, the life of any human being. The stack which was set fire to stood in a field remote from human habitation; and as to loss of property, there was scarcely any, the fire being discovered and extinguished immediately after it broke out.

A circumstance was relied upon as bringing the guilt home to the prisoner, which, to our mind, appears of a very equivocal nature. Some printed cotton and pasteboard were found on the spot tied together, and affording "manifest" indications that those materials were the covering of the combustible matter. Similar pasteboard was found in the prisoner's cottage, and the prisoner's wife had an apron of a similar pattern to the printed cotton. Some twine was also found in his house like that with which the parcel was tied. Now it is strange enough that a person found this

parcel on the surface *five weeks after the fire had happened, and after the place had been searched over and over again.* The articles were all of that ordinary description which are to be found in peasants' cottages. Might not, then, an enemy have placed it there *subsequently to the fire and the search?* That is, at least, possible. How it could have escaped the scrutinizing eyes of all the parish for five weeks it is not easy to conjecture. It is not more difficult to believe it was placed there by somebody *after* the fire, than that it escaped notice so long.*

Again, the prosecutor was one of the acting overseers of the parish, and the prisoner was one of that vast body of English peasantry, once so comfortable and moral, who, by circumstances wholly independent of their own conduct, have been reduced to the degradation and misery of receiving parish relief. The prisoner, like thousands of other paupers, was heard to complain of the bitterness of his lot; and a witness was called to prove he used expressions from which malice against the parish-officers, and, consequently, against the prosecutor, might be inferred. That witness did speak to expressions which shewed the prisoner was discontented with his lot; but the same witness admitted the prisoner also said, when alluding to the hard condition of the poor, that "he knew the parish-officers could not help it." This, we say, completely rebutted the presumption of malice against the overseer; and on his evidence the proof of the crime fails, as far as it was necessary to establish a *motive*.

But supposing the charge clearly proved, we consider it a monstrous thing to punish, like the murderer, the man who destroys some property under circumstances which can place no human life in peril. At Bury St. Edmund's, two or three years ago, the notorious *Corder*, the deliberate murderer of *Maria Martin*, perished on a scaffold; and now the

* *Jolly* was executed within a few hours after these remarks appeared in the *HERALD*, protesting—as he had done throughout—his innocence to the very last, at the scaffold.—ED.

population of this town are called upon to witness the "edifying spectacle" of an offender suffering the same punishment, on the same scaffold, for attempting to destroy a corn-stack in a lonely field! It is impossible but such confusion of degrees of guilt by such disproportionate punishments must have the effect of confounding the moral notions of the people. Talk of education indeed! One of the best results of *general education* is to give the people *accurate moral perceptions*; but how can this be done while our criminal legislation sets at defiance every just notion and principle of morality?—*Morning Herald, Wednesday, August 14, 1833.*

Case of William Jolly continued.

Our ingenious Contemporary of the *Globe* continues to assist our labours for the reform of the criminal law by his opposition. His serious arguments seem to us to be so sarcastic upon the system of judicial slaughter which he defends, that, notwithstanding all his solemn asseverations of being a grave and profound admirer of the science of judicial strangling, as by law established, we cannot but suspect him of aiming at the same object by ironical praise, as we seek to attain by unsophisticated argument. The vivacity of our Contemporary's genius, without doubt, induces him to treat so serious a subject with such apparent lightness of manner. Nor is his playfulness without a mixture of those gleams of mind which shew him to be conversant with the higher elements of thought: in the indulgence of a philosophic spirit he soars into the airy region of metaphysics, and leaves us to creep upon the ground of substantial argument and solid fact. It is true that those lofty flights sometimes induce an obscurity which the common sense of ordinary mortals cannot penetrate; but this is no detraction from his merit, as with a great portion of mankind the obscure is no bad substitute for the sublime.

Let us take the following sample of our Contemporary's reasoning :—

‘ With all due deference,’ he says, ‘ to certain notions upon punishment which are now prevalent, we deem the impunity with which a crime can be committed—the motives which induce to it—its injury as an example—and the baleful nature of the perverted associations in which it originates—are all points to be taken into consideration in the adoption of the punishment which is to operate in the way of prevention.’

What the writer means by laying it down as a *rule* that the *impunity* with which a crime can be committed, is to be considered in adopting the punishment which is to *prevent* it, we know not, unless he intends a sly and sarcastic hit at those sapient legislators who think to prevent crime by one particular mode of punishment, because the crime is of such a nature that it can be committed without the possibility of punishing it at all. Why death should have more terror than transportation, for him who expects a total exemption from all punishment as a consequence of his offence, we leave to metaphysical pundits to explain. Such knowledge is far too deep for us. The philosophy of hanging, as laid down by our Contemporary in his own ingenious way, is beyond our comprehension.

Let us suppose, however, that when the writer in the *Globe* spoke of the “impunity” with which crime may be committed, he meant the *facility*; and, taking it so, we ask if the whole of his reasoning does not go to inculcate the propriety of punishing the offences of *smuggling* and *poaching* with death, as well as *rick-burning*? In the two former offences there are *facility* of commission—dishonesty of *motive*—injury as an *example*—and the perverted nature of the *associations* in which the violations of the law originate; and, indeed, smuggling and poaching are more of the nature of gregarious offences than burning of ricks—which is more usually the crime of a solitary individual. When the four circumstances concur, our Contemporary has his four roads

of penal aggravation terminating in one point—at which point the erection of a gallows, with its human scarecrow dangling from it, he philosophically regards as the perfection of the system of civilized justice!—Surely if he intended to be satirical upon the barbarous “excellence” of our sanguinary code, and the reasoning by which a certain class of legislators reconcile it to their consciences, he has not been too severe.

With regard to what we said of the case of the convict *Jolly*, who awaits the sentence of the exterminating law at Bury St. Edmunds, he has indulged, after his fashion, in no small degree of misrepresentation. He says we mixed up the possibility of innocence and other special circumstances with general reasoning against the punishment of death. We did no such thing. We argued the case on two distinct grounds—one, the extreme doubtfulness of the evidence; and the other, supposing the prisoner convicted on the clearest testimony, it was not a case which required the carrying into effect the extreme penalty of the law. In addition to those considerations which the general reasoning against the iniquity and barbarism of a law that confounds such an offence with deliberate murder admits, we insisted upon the propriety of some attention being paid to the “recommendation to mercy” which the Jury tacked to their verdict—which was equivalent to saying, “though we find the prisoner guilty, we are of opinion that it is not one of those cases in which dispassionate justice demands a sacrifice of life.” Be it borne in mind, too, that the Jurors were farmers, and that the property attempted to be destroyed, but which was not, in fact, destroyed, was farming produce.

Our Contemporary has also stated, and we believe in the spirit of wilful misrepresentation, that we described rick-burning as “a minor offence against property.” We never so described it—on the contrary, we have always treated it as a very serious offence against property—but still against

property *only*, unless in cases where the rick was so situate that the burning of it might endanger life, which it did not in this instance, inasmuch as it stood in a field remote from human habitation.

We did, indeed, consider such an act a minor offence compared with the wilful and deliberate taking of human life. We instanced the case of *Corder*, who perished on the same scaffold for murder, where *Jolly* is ordered to die by a law which disgraces the name of justice by so confounding the degrees of guilt. The spirit of revenge which inflames the incendiary is repaid with interest by the still more vindictive spirit of the law. We would make justice more dispassionate, that *life and property might become more secure*. —*Morning Herald, Thursday, August 15, 1833.*

Charge of Chief Justice DENMAN to the Grand Jury of Lancashire, on the recent amelioration of the Criminal Code.

The charge reported to have been delivered by Chief Justice DENMAN to the Grand Jury of Lancashire, presents some points deserving of public attention. In speaking of recent ameliorations of the Criminal Code, his Lordship is stated to have said that—

‘The superior humanity and superior *wisdom* of the present age ‘had given a merciful character to the punishments awarded for some ‘species of offence; as it was too frequently found that the extreme ‘severity of the laws, as administered heretofore, operated more as a ‘*preventive to prosecutions* than as a *preventive to crime*.’

It is precisely on this principle, and with a view of substituting punishments *just* in their nature, and *certain* in their operation, for punishments whose over-severity defeats their own intention, that we have for years unremittingly laboured to bring about such changes as have taken place, and others that are yet to be carried into effect, by instructing the public mind on the important subject of criminal jurisprudence. Our object has been, to make the legislation

which applies to crime so rational, moderate, and wise in its enactments, that it would be possible to carry it into execution without exciting more sympathy for the offender than respect for the law. Judicial examples fail to produce any beneficial effect when they are of such a nature as to revolt the feelings, and shock the reason of mankind.

The Legislators who are fond of capital punishments, and the Magistrates who cling to the barbarous system of extermination, pretend to a great zeal for the protection of the public against the predatory enterprises of guilty men. Zeal, however, when untempered by discretion, always injures the cause in which it is exerted. So it has proved in the case of the criminal laws, and what was, until lately, the prevalent mode of their administration.

An over-severity of punishment, instead of protecting the public interests, operates as an encouragement to crime. It sets the feelings of nature, and those moral instincts which vicious legislation can never entirely eradicate from the heart of man, in array against the law. What is the consequence? We will describe it in the words of the great commentator on the laws of England, who, speaking of the exterminating laws of England, in his day, says—

‘ So dreadful a catalogue, instead of diminishing, *increases the number of offenders*. The *injured*, through compassion, will often forbear to prosecute; *Juries*, through compassion, will sometimes forget their oaths, and either acquit the guilty, or mitigate the nature of the offence; and *Judges*, through compassion, will respite one-half the convicts, and recommend them to the Royal mercy. Among so many chances of escaping, the needy and hardened offender overlooks the multitudes that suffer. He boldly engages in some desperate attempt to relieve his wants, or supply his vices; and if, unexpectedly, the hand of Justice overtakes him, he deems himself peculiarly unfortunate in falling at last a sacrifice to those laws which long impunity had taught him to contemn.’

In advocating a reformed system of criminal law, which, instead of indulging an indiscriminate ferocity, shall apportion punishment to the relative degrees of guilt, we wish to

make Justice truly strong, by enlisting in her service the moral sentiments of mankind. Revengeful laws ensure the total impunity of a large proportion of criminals, by preventing *prosecution*. Our object is to introduce laws which, by acting on the principles of dispassionate reason, and carrying public opinion along with them, may PREVENT *crime*, and thus give *better protection* to life and property than under laws of blood they can ever enjoy. The Lawgivers and Magistrates who advocate an indiscriminate severity of punishment, are *ignorantly assisting the progress of crime*, because they set public opinion and private feeling against the execution of the law.

The law of *arson* in this country is monstrously unjust and absurd. It inflicts the same punishment upon the person who fires a stack of straw in a lonely field, as upon the incendiary who fires an inhabited dwelling, and burns a family in their beds! In neither France nor America does such an enormous violation of the principle of proportionate punishment exist. It is only in England, of all civilized countries, that a little property is weighed against human life. It is only here that Mammon, intensely worshipped, is appeased by human sacrifices for the loss of a little pelf.

In the charge in which Chief Justice DENMAN uttered the enlightened sentiments which we have quoted, he also expressed an opinion which it is impossible to reconcile with the clear notions of criminal jurisprudence, and the sound moral perceptions for which we had given him credit. He seems to entertain the doctrine that in case of breaking into a house in the night-time, no distinction as to punishment ought to be made, *whether life be sacrificed or not*. Surely there is a great difference in the malignity of the crimes of those who wantonly *murder* when they rob, and those who, in their acts of guilty depredation, respect the sacredness of life. To confound robbery with murder, as Dr. JOHNSON says, is, to reduce murder to the level of robbery. It is to take away the peculiar horror which should

attend upon that greatest of all crimes, and to encourage murder as the means of removing for ever the witnesses of robbery.

BLACKSTONE, who was as anxious that property should be protected as any Judge now on the Bench, said, more than sixty years ago, "it is absurd and impolitic to apply the " same punishment to crimes of different malignity."

If the moral perceptions of men had not been confused, and reason itself perverted by a long familiarity with revengeful laws, we should not hear such sentiments from men of educated minds and naturally humane dispositions, as occasionally fall from the Bench on the subject of criminal law. But, seeing the changes that have been wrought in the barbarous system, in the course of a few years, we cannot despair of the ultimate triumph of reason in the success of the principles of enlightened justice.—*Morning Herald, Monday, August 19, 1833.*

Attempt to revive in Ireland the Law for hanging in chains.

A Bill is in the House of Lords waiting the third reading, called the "Sentence on Murderers (Ireland) Bill;" and our readers are not aware that one of the provisions of this Bill is to again legalize in Ireland the barbarous practice of gibbeting the bodies of murderers after execution.

This same practice was revived in England, under an Act* passed not long ago by the present Ministry, in contravention of their former avowed principles as to criminal jurisprudence. They had, as the public well know, maintained doctrines out of office which were totally at variance with that stupid and ferocious sort of legislation, which degrades Justice, to perform the task of a disgusting ministration at the altars of Revenge. Of all the barbarities which in unen-

* 2 & 3 Will. IV., cap. 75, passed Aug. 1, 1832.—*Ante*, p. 4.

lightened times became interwoven with the criminal law of England, there was none that betokened a darker origin than the gibbeting the dead bodies of malefactors, to rot in the public gaze—objects not of moral example—not of corrective justice, but spectacles of disgust and abomination, which shocked the feelings of the good, and made the wicked and the hardened still more brutal.

We opposed the Bill to revive the practice of gibbeting in this country when it was under discussion; we opposed it on the ground that gibbeting was a practice of barbarous origin, which the progress of civilization had exploded; that it was calculated to brutalize the populace, not to improve or instruct them in their moral and social duties; we predicted that it would be a failure, because civilization had advanced too far, to allow a return to the barbarous practice. The Bill passed, however. It gave Judges the alternative of ordering the bodies of murderers to be exposed to rot before the public eye upon gibbets, or that they should be buried within the precincts of a prison. To the latter alternative we had less objection. It is not of a ferocious character like gibbeting. It does not obtrude an offensive exhibition on the public view, nor does it liken Justice to some foul spirit that takes a delight in preying on carcases.

Certain Judges, in the first instance, however, resorted to the barbarous alternative. The two first murderers convicted under the Bill, were ordered to be hung in chains.* One of them was *Cook*, the murderer of Mr. Paas, at Leicester:—certainly his crime was attended with circumstances of great brutality; but that is no reason why justice should resort to a brutal mode of punishing it. The other was *Jobling*, who murdered a Magistrate at Jarrow Slake.

In the former case the demoralizing effects of the practice soon became visible, by the very gibbet and its horrid burden

* Upon two circuits, and within a fortnight after the Act had passed.—*Ante*, p. 4.

becoming an object of attraction to the worst characters in Leicester, who assembled about it in crowds on the Sunday evening, held a sort of fair there, and actually played cards immediately under the gibbet. The respectable people of Leicester prayed to be relieved from the nuisance; and an order was sent down from the Home Office to remove it, which was done after it had been but a few days, practically demonstrating by its effects the truth of our anticipations.

In the other case, the friends of the malefactor came and stole the body, which they buried in the sands, so that the last resting place of the remains of the murderer continues to be unknown;—probably no very strict search was made, the failure of the other experiment having, we suppose, shewn Government the folly of attempting to check crime by wielding the weapons of exploded barbarism. Since then no Judge has ordered, in this country, the body of a murderer to be hung in chains: they have invariably adopted the more decent alternative of ordering the body to be buried within the precincts of a prison.

A notice of motion has been given by Mr. EWART for next Session,* to expunge the law of gibbeting from the Statute Book; and yet, *at this moment, such a law is passing the Legislature for Ireland!*—Is it thought that that country is too civilized, and a fresh infusion of barbarism† would do it good?—or is the gibbet designed to be the symbol of the relief intended by “a liberal and enlightened” Government, to a wretched, unemployed, and starving population? Are the

* In giving notice of motion, Mr. EWART had obligingly acceded to the wishes of the COMMITTEE for diffusing Information on Capital Punishments.—ED.

† That this cutting reflection was not unmerited the sequel proves. *Vide post*, p. 148. The “*Portable Gallowses*” for Ennis and the neighbouring counties, anticipated in the organ of these Ministers two years before, are not forgotten—nor is it forgotten *who*, as to these matters, was then at the helm of Government.—ED.

barbarities of judicial revenge to obviate the effects of want of employment—and hanging in chains, to supply the place of poor-laws?—*English Chronicle, Tuesday, August 27, 1833.*

*Attempt to revive the Law for Hanging in Chains continued—
This barbarous attempt defeated.—Passing of Mr. EWART'S
Bill, in 1834, to cancel it from the Statute Book.*

The Government Bill of 1833, for reviving in Ireland the practice of “hanging in chains,” was subsequently read the Third time in the Upper House, and passed; but it *never received the Royal Assent*. We presume its authors had not courage, after the exposure of its merits, to submit it to THE KING. But, although foiled for the present, their attempt was renewed in the next Session of Parliament, when they again introduced the self-same Bill under a *new title*—“*Anatomy of Criminals (Ireland) Bill.*” The history of the whole proceeding is correctly given in a Periodical, published December 1834, which reports the disposal of Bills before Parliament in the preceding Session, for amending the Criminal Law. We subjoin it.—ED.

‘The first to which we shall advert, was Mr. EWART’S Bill to abolish the practice of “*hanging in chains*” the bodies of criminals executed for murder. Happily the Bill has passed into a law,* so that this barbarous custom is put an end to, we hope, for ever: but there are some particulars connected with it of sufficient interest to be placed upon record.

‘It will be recollected that for many years the “*gibbeting*” of dead bodies had been discontinued throughout the kingdom: the public were therefore not prepared to expect its revival. A revival, however, was attempted in 1832, in England, and that by a Reform Government. When the Anatomy Bill repealed the clause for dissection, Earl GAST himself publicly gave his sanction to the insertion of a

* 4 & 5 Will. IV., cap. 26, introduced March 13, and enacted July 25, 1834.—ED.

clause for "hanging in chains;" leaving it discretionary with the Judge, in lieu thereof, to sentence the criminal to be buried in the gaol.

' Scarcely had the Act* passed, when it was carried into effect in two Counties, Leicester and Durham, where the public were doomed to witness the revolting spectacle—the "accursed tree" again perennial. In the former instance, Leicester, the nuisance by the scene of rabble dissipation, to which it led, was found too great to be endured, and Government gave orders for its removal within four or five days of its being set up:—in the latter, Jarrow Slake, Durham, the corpse was stolen, and a new penal offence thus perpetrated, as was supposed, by some of the relatives.

' No further attempt was made to carry this sentence into effect in England; but Ireland, where also the practice had been relinquished many years, was selected as a field more fit for this legislative pollution. Accordingly in the next Session, 1833, Mr. LITTLETON, the then Irish Secretary, expedited† a Bill through the House of Commons, the object of which was, to extend to the Sister Island the provisions of the new English Act. It was denominated, if we recollect, "Sentence on Murderers (Ireland) Bill." Its nature being discovered, it was announced to the public by the *Morning Herald*, with the characteristic talent that has distinguished many articles on the Criminal Law which have appeared in that Journal. The Bill, however, was pressed through the Lords, by whose assistance, or at least connivance, we say not;—suffice it to observe, that it never appeared in the list of completed statutes: *it never received the Royal Assent*. Thus ended the second attempt.

' The history of the third involves some curious particu-

* 2 & 3 Will. IV., cap. 75, enacted August 1, 1832.—*Ante*, p. 4.

† In nine days, having been introduced August 1, by Mr. LITTLETON, and Mr. Solicitor-General (Sir John CAMPBELL), and passed by the Commons August 9, 1833. The Bill as printed, is No. 604.—ED.

lars :—In the following Session, 1834, the very same Bill* was again introduced, but under the new and deceptive title of “*Anatomy of Criminals (Ireland) Bill.*” It was rapidly passed through its principal stages, with the extraordinary omission of *never being printed*, by which means Members and the Public were kept in ignorance of its real object. True it is the duty of a representative not to give his assent to laws affecting the whole community, the principles of which he has not examined : but let that pass—there are great allowances to be made. The nature of this Bill, however, transpired out of doors, and a Public Meeting was immediately called to consider the propriety of petitioning against it. Several Members of the Commons were apprized of its provisions ; and the House, upon the evening [March 10,] when it was to have gone through the *Third* and last reading, ordered its postponement [for three days] ; directing, on the motion, we believe, of Sir Robert PEELE, that it should be *printed*, in order that before it passed, they might as usual, first know its contents !

‘Meanwhile Mr. EWART, to whom, with other Members, the Country is already so much indebted for his perseverance to obtain a mitigation of the penal law, introduced his own Bill, to remove from the Statute Book the clause by which convicted murderers were sentenced to be either hung in chains, or buried in the gaol. The Government seeing it vain longer to resist the impulse of public opinion, allowed this Bill to pass both Houses, on condition of retaining the “burying within the gaol :”—it has therefore become a law of the land, extending to the whole of the United Kingdom.

‘But, perhaps, the most remarkable circumstance connected with this proceeding remains to be told. While Mr. LITTLETON’s Gibbet Bill was flying through the Commons—its contents unknown—the assizes in *Ireland* were at hand, or rather had commenced ; and as many as eight pri-

* This Bill was No. 100, and as before, was brought in by Mr. LITTLETON, still Secretary for Ireland, March 1, 1834.—ED.

soners, convicted of murder at different towns we could name, *were sentenced* to be executed, and *their bodies afterwards hung in chains.** The first of them was put to death; and the subsequent disgusting preparations *were actually going forward, when Government orders arrived, countermanding the latter part of the sentence!* The Gibbet Bill of the [WHIG] GOVERNMENT had been *defeated* by its exposure in the House of Commons, and the introduction of Mr. EWART's Bill!

' We have thus minutely given the history of one Criminal Law Bill, to convey some idea of the difficulties opposed to the progress of Reform in this department, when not undertaken, or not sincerely encouraged, by the Minister of the day. * *

* * * * * ' Thus it appears, on a review of the various Bills introduced last Session in further mitigation of the Criminal Law, that not one was brought forward by the Government, although such was the feeling among the people's representatives, that they would have passed them all; and, in point of fact, they did pass four of them; and assented to the principle of the fifth. So much for Mr. Spring RICE's "*danger of outrunning public opinion!*" It likewise appears that, of these four Bills which did so pass the Commons, two were stopped in the Lords by leading Members [Lord BROUGHAM, &c.] of the same Government, for reasons which seemed then, as they do still, perfectly unsatisfactory. It appears, lastly, that the two Bills which were allowed to go through the Upper House, were, in the course of their progress, damaged by the same Government. We say this with grief, because the same men espoused a better cause *before they succeeded to office*.—They have now shared the fate of their predecessors; for it is not a little remarkable that the fall of the Tories in 1830, and that of the Whigs in 1834, were both of them immediately preceded by resistance to public opinion in *clinging to sanguinary punishments*.—" *Herald of Peace*," December, 1834.

* For one case, see *Globe Newspaper*, March 19, 1834.

Case of Charlotte Long, sentenced to death at the Gloucester Assizes, for setting fire to a haystack.

We cannot avoid calling the public attention to a trial, ending in the capital conviction of a female named *Charlotte Long*, at Gloucester, for setting fire to a rick of hay, and whose sentence, it is said, is ordered to be carried into execution on the 31st of August.

The case against *Charlotte Long* rested almost altogether, as far as we can judge from the published report, upon the evidence of a woman named *Mary Burford*, who appeared in Court under very suspicious circumstances, having been herself brought before the Magistrate upon the very charge.

[The evidence of such a witness, it must be admitted, was very liable to doubt and suspicion; and, without strong corroboration in some material facts from unimpeachable testimony, could not safely guide a Jury to a conclusion of guilt—more especially, where the penal consequences are so dreadful to the accused. According to *Mary Burford's* own statement, *she knew* before the deed was done, of the prisoner being about to set the stack on fire, and she made no disclosure.—If this did not render her an accomplice, it, at least, involved her in the guilt of *misprision of felony*, and, connected with the fact of being herself charged with the offence in the first instance, induced a suspicion of deeper criminality.—Is this a case for the penalty of blood?]

We speak not now of the barbarous law which makes *no distinction* between the guilt of a person who sets fire to a stack of hay in a *field remote* from the dwelling of man, and the crime of the offender who sets fire to the *habitation* of the owner of the stack, and thus seeks the destruction of himself and family: we speak not of the disgrace to Christian England of sending this woman to the scaffold, with an infant at her breast, for an offence which is punished with *death* in *no other* civilized country: we stand upon the suspicious nature of the evidence, *provided the case be correctly reported.*

It is true Mr. Baron GURNEY is made to say that, "if the Jury thought the offence was committed by the prisoner, it was not material whether she had been instigated to commit it by *Mary Burford*, or not." With great submission to the Learned Judge's opinion, we do say that it makes a great difference whether the Jury thought the prisoner had been instigated by *Mary Burford*, or not ; for if the latter were the instigator, she was an *accessary before the fact*—the worst sort of *accomplice* ; and, as such, her testimony required stronger *corroboration* than it seems to have received.

We hold it scarcely possible, under such circumstances, for Government to allow the sanguinary law to be enforced against the unhappy woman, who, *at the worst*, was but the victim of the malignant artifice of another. Such, at least, was the opinion of the *Jury*, who returned the following verdict:—"We find the prisoner guilty, but beg *most strongly to recommend her to mercy* ; because we think she must have been set on as the tool of some other person." To which the *prosecutor* added—"My Lord, I believe she was drawn into it by some one else, and I wish to recommend her to mercy." Of course those recommendations of the prosecutor and the Jury of the country were rejected by the Bench, and the prisoner was sentenced to be hanged ! as if her guilt were clear.—*Morning Herald, Friday, August 30, 1833.*

Case of Charlotte Long continued.

Our Contemporary of the *Globe* seems desperately resolved, like the moth that flutters round a candle, to scorch his wings with the law of *arson*. On this subject we have repeatedly taken the trouble to expose his sophisms, and, if possible, enlighten his understanding ; for he argues now in favour of the capital and ineffectual laws relative to the minor offences, contained under the generic name of *arson*, as our Draconic legislators did half a century ago, when

every Session was distinguished by a new crop of capital enactments, and almost the whole of our penal code became a rubric of blood. What was the consequence? The extirpation of offences? Quite the contrary—The rapid and alarming *increase of crime*. The judicial slaughter which, at the Sessions of the Old-Bailey and at every Assize, made the Courts of Criminal Law resemble shambles rather than the temple of dispassionate Justice, rendered the infliction of death so familiar, that it ceased to terrify. It was no longer the appalling punishment which it was when reserved for crimes of rare and peculiar enormity. It may be that the very ferocity of the law produced a corresponding hardihood in guilty minds, and generated a depraved emulation to brave and despise it. Certain it is that crime never flourished so luxuriantly as when English Justice had erected her throne upon a Golgotha, and sat surrounded by the ministers of Vengeance, and the weapons of extermination.

Laws which take human life wantonly or unnecessarily—laws, in fact, which shed human blood for crimes which are not of the first degree of malignant enormity, are themselves *crimes*; and the executions which take place under them are, in the eye of Reason and Morality, nothing else than *judicial murders*. Now we admit that arson, or the wilfully burning the property of another, in whatever shape it may be—whether in houses, or stacks of corn and hay, or wood piles, is a very bad offence; but there is a great difference both in the danger and malignity of the offence as it regards an inhabited house, and a stack of corn or hay remote from any human dwelling. The law of every civilized country takes the distinction but our own, which confounds many different degrees of crime by the one punishment; and the law of England took the distinction formerly, until that rage for sanguinary enactments, which existed during the greater part of the last century, found its way into the British Legislature, and which made Edmund BURKE, with sarcastic truth, observe, that “if a Minister

refused every other favour to a Member of Parliament, he was sure to accommodate him, if required, with a new felony without benefit of Clergy."

Our Contemporary seems to think that Legislators are exempt from the authority of the great commandment which says "Thou shalt do no murder." Very differently do we regard that ordinance of the Deity. Every law that, from a vindictive feeling, takes life, is framed in a murderous spirit, and makes the lawgiver guilty before a higher tribunal than that of man—before the tribunal of Him who has proclaimed that ordinance to all the earth—of the crime of deliberate murder. "The true hangman," says Sir William MEREDITH, in his admirable speech in the year 1777, on the sanguinary character of our criminal law—"the true hangman is the Member of Parliament; he who frames the bloody law, is answerable for the blood which is shed under it."

Now we ask to what good end has all the blood been shed, that has been poured out these three years past for burning ricks of corn or hay? Has it repressed the crime? Far from it. No offence is so inexorably punished, and none prevails so much! It excites the wonder of some persons that, considering the number of executions that have taken place for this crime during three years, it has not been extinguished, at least temporarily, by the mere *process of extermination*. It still, however, is so prevalent, that we must adopt one of these two inferences—either that the law has in general laid hold of the *wrong persons*, and the innocent have suffered for the guilty, which we believe, in many instances, to have been the case; or else that the *penalty of death* is *not* the fitting penalty for the crime—because the guilt being inferior to what exists in some other cases of arson, the public feeling revolts at the law, and sympathizes with the offender: so that a great proportion of the *guilty* are *acquitted*, merely because there exists a large class of Jurymen in the kingdom who are shocked at the

punishment of death for the offence, and would rather commit what BLACKSTONE calls a pious perjury, than be accessory to the homicidal vengeance of the law.* Now, as the "philosopher," whose observations have called forth these remarks, professes to be a Reformer, and the organ of a reforming Whig Ministry, we ask why it is that he does not prefer corrective and reforming punishments to the criminal legislation of unreasoning terror, brute force, and death? He may not believe there are laws written on the hearts of men anterior to human laws, and which human laws can never abolish; but we are not ashamed to say we would at once reject the philosophy, as only an impious refinement on ignorance, which attempts to justify a system of legislation that is wholly independent of religious and moral considerations. A community that sacrifices every thing to "property," and makes no account of what constitutes the *moral wealth* of nations, may be as rich and powerful as Babylon, or Tyre, or Sidon, but it is sure to come to similar destruction.

Has it never occurred to the philosopher, who is so enamoured of the legislative plan of moralizing a people by the simple process of strangulation, that there is a duty incumbent on the Legislature previously to that of punishing crime, which is the endeavour to prevent it by giving them sound, religious, and moral education, and by taking care to make their condition as comfortable as the affairs of the country, honestly and wisely administered, will allow? By ignorant or sordid acts of the Legislature, whole masses of industrious people are frequently thrown out of employment, and, of course, placed more within reach of criminal temptation than before. The state of the agricultural dis-

* In confirmation of the writer's views, it may be stated that out of 277 prisoners in England committed *capitally* on the charge of arson, only 78 were convicted.† This was for three years ending with 1833. What a frightful premium on the repetition of the crime!

† *Parliamentary Returns.*

tricts is a state of rapid decline. When the farmer is impoverished, the labourer must feel the effects. The evidence taken before the Agricultural Committee shews that the farming interests are in a condition of unexampled depression and embarrassment. It is not the gallows and the rope which will cure the moral evils, or repress the crimes, arising out of such a distempered state of the agricultural body of England. Blood will not extinguish the fires which misery, and social distress, and legislative errors have kindled. The philosopher who proposes the *ultimum supplicium* as a remedy for such a state of things, is not indeed liable to the weakness of humanity:—we should, however, consider that surgeon a cruel and ignorant quack, who would amputate the leg or arm when the disease was in the stomach or the heart.

As to the case of *Charlotte Long*, the wretched woman who was hanged for setting fire to a hay-rick the other day at Gloucester, our Contemporary has fallen into a great mistake. He calls attention to what he says is the “substance of the unhappy female’s confession, that she set fire to three ricks belonging to people whom she had no wish to injure, in order, without suspicion, to commit a fourth in a quarter where she did wish to inflict injury.” Now, whoever turns to the paragraph from which he draws his *facts*, will find that what he calls the *woman’s confession*, is only the evidence of the principal witness, or, properly speaking, the only real witness for the prosecution, who was also a female, and only charged the prisoner with the crime when she was taken before a Magistrate, on suspicion of having committed it *herself*. We shewed, the other day, that this witness, as reported, was not at all corroborated in her testimony, as the law of England requires one who stands in the light of an accomplice to be corroborated.

The Jury strongly recommended the miserable woman to mercy, on the ground that “they believed her to have been the tool of another.” She was a forlorn woman, whose

husband had been transported, and who stood at the bar with a baby of two months old at her breast. A very small portion of hay had been burned, and it was not proved the prisoner ever used an expression of malice against the prosecutor ; but it was proved that the principal *witness* against her had expressed herself as if determined to do an injury to one of the persons whose rick had been fired. Was this a witness to be believed on her uncorroborated statement ?

If the prisoner have made a confession, indeed, we should like to have some more evidence of it than a vague report, which is easily fabricated, and for which no one is responsible. Poor *Jolly*, whom the respectable inhabitants of the town of Bury St. Edmund's petitioned Lord MELBOURNE to spare the other day, and who left a wife and six children behind him, took the best means of preventing a successful fabrication of a reported confession, by protesting his innocence with his dying breath, in the face of the people, on the scaffold. We do not say that the woman has not confessed ; but we do say we have yet *no proof* of any confession.—*Morning Herald, Thursday, September 5, 1833.*

The modesty of the writer in the *Globe* is on a level with his veracity. The former quality no doubt it is which forbids him to boast of two advantages which he possesses over us in disputation : the one, that he is always ready to misrepresent the argument which he cannot answer ; the other, that where he cannot reason, he can at least revile.

* * * * *

* * * We now tell the philosopher of the *Globe*, that notwithstanding all his efforts as a conservator of the gallows for rick-burning, that machine will before very long be thrown into the fire, and a more rational and effective remedy for the disease be adopted in its place. We hope Lord MELBOURNE will not be alarmed at a prediction of so “ revolutionary ” a tendency.

As to what the "philosopher" says of the Mosaic law, we may observe that when the statutes of England punished almost every sort of theft with death, our legislators utterly forgot that the Mosaic law adopted the principle of *restitution*—ordering fourfold for a sheep or an ox, and for robbing a house double; onefold, as it has been observed, for *reparation*—the rest for *example*. If a thief could not pay in *goods*, he could by *giving his labour* to that amount to the party wronged. There was a crime punished with death, indeed, by the Mosaic law, which is considered *no crime* by the law of England. It is, under some circumstances, far worse than rick-burning; it violates the rights of hospitality—destroys the peace of families—renders children motherless, and inflicts other calamities that we need not enumerate.—If that crime were punished with *death*, it would make some havock in the affluent classes; nor would the ranks of our vindictive legislators, or inexorable administrators of the law, altogether escape!

Our Contemporary charges us with the delinquency of holding opinions in common with a class of men* whose persevering efforts for many years have led to the downfall of the commercial abomination of the slave-trade, and to various ameliorations of our internal polity. Our answer is, that Whig writers never thought *that* a reproach until their masters were in office.—*Morning Herald, Friday, Sept. 6, 1833.*

*** The *Gloucestershire Chronicle* has published what it calls a confession of *Charlotte Long*, and which, we presume, the writer took care to have authenticated. But how different from that which the Treasury writer had given to the world as the prisoner's confession!—The Journal in question says it gives it on the authority of *Mrs. Linton* and *other* officers of the gaol. What officer *Mrs. Linton* is we are not told—not a *father-confessor*, we suppose. However, it is

* The Society of Friends is the class here alluded to.

stated that the prisoner repeated to *Mrs. Linton* many times, that she had committed the crime of which she had been convicted ; but that she had done it *through the instigation of the other woman (the witness)* ; and she (the prisoner) added, " I hope God will forgive her." She said, "*Betsy Burford* wished me to do it ; and I said, if I take a fire-stick in my hand, I shall be detected. If I take a candle, it will be seen, and I shall be caught. When *Burford* replied, ' I'll tell you how you must do :—take a piece of tinder, put it in a rag with some gunpowder, and then blow it, and it will take fire ; then come and give me the signal, as my husband will be in bed.' I did go and give the signal within two minutes after I had fired the stacks, and Oh ! the horror and sting of conscience I suffered when they were in flames ! I felt as if I could have given a thousand worlds to restore the property."

Was this a woman, we ask, so hardened in the ways of crime, so obdurate to the better feelings of our nature, that a corrective and reforming mode of punishment could have taken no effect upon her ?—If her confession be not taken as true, her guilt remains doubtful ; but if it be true, does it not prove that the poor, weak-minded dupe of the artful and malignant instigator was capable of being made to feel her guilt severely, without taking her blood ?—On another occasion, in speaking in reference to the conduct of *Burford*, the prisoner said, " She offered me money, and promised never to tell if I would set fire to the stacks. I said, Why should I do it ? None of them have done me any injury, and I bear them no enmity."—We pleaded only for a commutation of the sentence for a severe and corrective, but not exterminating punishment. Have we not stated enough to justify it ? The Royal prerogative of mercy is as much the law of the land as the statutes of blood, which it is intended to mitigate.

We shall here quote what was said, not by a Whig authority, when inserting the statement at length, of which

we have given but a part. "We have copied (says the "*Standard*) this intended apology for strangling those two "miserable creatures [there was a man executed along with "her] from the *Gloucestershire Chronicle*, because that Journal seems to think it conclusive ! But we confess that in us "it produces an impression the reverse of that for which it is "evidently intended—it makes the *sacrifice seem more horrid "and disgusting.*"* We need scarcely add that we heartily

* The subjoined remarks are also from the *Standard Newspaper* of a later date.—ED.

It will be remembered that our respected Contemporary, the *Globe*, held the *Morning Herald* and ourselves in controversy for several days, upon the propriety of hanging a woman, with a child at her breast, for burning a hay-stack. There are some points in which we are unfortunately less conservative than the *Globe*. One of these is the venerable practice of strangling our fellow-creatures with the holyday ceremonies usual in this civilized country, and in this age of enlightenment, the 19th century. For ourselves, we never hear of one of those great solemnities without a painful sense of the infinite amount of misery inflicted—generally to no good end—always for an end that might be as well accomplished by other means. Whatever others may think of it, the hanging of a woman, with a child at her breast, or even of a young man of 22, is to us a terrible thing ; and when we hear men talk lightly of such sacrifices, or treat them lightly in print—may we be pardoned—we often wish them to suffer the moral agony of twenty-four hours expectation of the halter. * * * * * Let such persons but place themselves in the situation of the mother weeping over a child from which she is to be torn in a few hours by a death of torture and disgrace, and to which she is to bequeath nothing but a legacy of ignominy and the world's cold scorn—or let them even enter into the feelings of a man in the opening summer of his years, when the affections are at the warmest, and hope at the highest, contemplating the moment at which he is to be cut off from amongst men, to be remembered only by kindred and friends with shame, by associates with indignation and contempt—then let them wind up the consideration with a few guesses at the mortal agony, the shock, strangulation, convulsion, and the whole struggle of tearing life from a strong and healthy frame—and they will think hanging no

concur in this sentiment. Hereafter it will excite wonder how those things were done in a civilized age.—*Morning Herald*, Wednesday, September 18, 1833.

* * * There is a certain class of persons who have a proverbial reputation for possessing a “short memory,” and, undoubtedly, our Contemporary (the *Globe*) has afforded us many proofs that he belongs to that sect of philosophers. As he has often to deny what he has previously asserted, he finds the advantage of being blessed with a remarkably frail recollection of his own statements. The article which has called forth these observations, furnishes a striking instance. He says, speaking of the case of *Charlotte Long*, for whom he gratuitously published, some time ago, a confession, as a text for a most enlightened sermon of his own—“Now will it be believed that the *Globe* never gave any confession to the world, but simply commented on the extracts from the local papers?”—What is the fact? On the 3d instant our Contemporary copied an account of the execution of the wretched woman above named from a Morning Paper, we believe from our own, and then used the following words:—

‘In reference to some past reasoning of ours, we particularly call attention to the substance of the wretched female’s confession, that she set fire to three ricks belonging to people whom she had no wish to injure, in order, without suspicion, to commit a fourth in a quarter where she *did* wish to inflict injury. We ask if all attempts to palliate criminality, which springs out of perversion of mind so truly fearful and diabolical, are not in the highest degree weak and mischievous?’

Will it be believed that the statement copied from a Morning Paper did not contain the substance of any confession, but merely repeated what *Mary Burford*, who had

laughing matter. But enough of this. Our readers are not all as cold upon such a subject as the Archbishop of DUBLIN, or the *Globe*.—*Standard*, January 8, 1834.

been herself charged with the crime, and admitted as a King's evidence, deposed to on the trial? What the writer in the *Globe*, with his usual love of truth, called a "confession," was introduced in the following manner, as may be seen by any one who turns to the Paper of the date we have specified:—"It appears that this unhappy victim of the laws of her country had not the slightest ill-will towards either of the persons whose ricks she set on fire; but it was stated by the *King's evidence*, who was examined, that the prisoner had *told her*," &c.; and then comes that "diabolical" statement which our Contemporary called a *confession*, and commented on accordingly.

It is well for the admirer of sanguinary punishments that offences against *truth* have not been made *capital crimes*. The "moral" indignation of our legislators went very near it at one time, when the lowest species of *written fraud*, affecting the smallest pecuniary transactions, was made punishable with death. We did not labour in vain to break down that and several other parts of the barbarous, revolting, and imbecile system which, in proportion as it substituted the brute force of unreasoning revenge, for the spirit of considerate and reforming justice, broke down the security of that very property which it pretended to protect. We yet expect, notwithstanding the virulent opposition of the Whig Treasury Journal, to see the whole of the criminal law of England worthy a Christian people and a civilized country; and then, but not till then, will justice be most *effective*, and *life and property* most *secure*.

Our Contemporary finds fault with being addressed as the "Treasury-scribe," and also asks "what special connection have Whiggism and the Treasury with rick-burning and *Charlotte Long*?" As to the first subject of complaint, we really were not aware that he was ashamed of his connection with the Treasury. We rather thought he was proud of it; and it is very likely that we should have taken less notice of his absurd disquisitions on the Criminal Laws, if

reputed connection with the Government had not given him a factitious importance. If he seriously disclaim that connection, we will try to believe that the marvellous coincidence between the principles of which he approves, and those on which the Whig Government acts, is accidental:—whether we can succeed in believing it, is another question. Now as to “what special connection Whiggism and the Treasury have with rick-burning and *Charlotte Long*,” we need merely observe, that it is under a Whig Government, blood is incessantly shed for rick-burning, where life is neither assailed nor endangered; and still the crime rather increases than diminishes—because Government rely too much on the efficacy of the gallows, and take not the pains which a really enlightened and liberal Government would take, to remove the causes of the crime, *by raising the condition, and promoting the moral and social welfare of the labouring population.*

The philosopher talks of “mawkish jargon” about the sixth commandment and human sacrifices. A stupid sneer at religion and humanity will not reconcile the great mass of the people of this country to that class of legislators who despise both the one and the other. If a heartless indifference to human suffering be a proof of strength of mind, such rulers as NERO and DOMITIAN must have been men of prodigious intellect; and the Emperor NICHOLAS, while he outrivals the fame of the ancient HEROD, a far greater man than the author of the CODE NAPOLEON, who, with all his austerity of character and military ambition, had so much of the “weakness of humanity” in his constitution, as to give France a milder code of criminal jurisprudence than she ever before possessed. Rick-burning is not punishable with death in France.

We repeat that the great commandment, “Thou shalt do no murder!” was addressed as much to Princes and to Parliaments as to the people whom they govern. But the writer in the *Globe* spurns religious considerations, as beneath

the notice of legislators. Be it so. How does his doctrine of *utility* serve him as a foundation for capital punishments? The progress of the crime* shews that the bloodshed is as *useless* as it is brutalizing to the populace that behold it. The *Leeds Intelligencer* tells of two fresh instances following close upon the two executions which it recorded the week before. We wish to make property and life *more secure* than they ever have been, or ever can be, under vindictive laws, by rendering those laws reasonable and just. Enlightened justice sees a great difference between setting fire to a hay-rick in a field remote from human habitation, and applying the torch to an inhabited dwelling—Vindictive law sees none.

It is Lord BACON who observes that the very acerbity of the law deadens its execution. So it is with the law of *arson*: many guilty are acquitted, because all who are convicted, right or wrong, or very nearly all, are put to death. "It is vain," said Mr. CANNING, "to suppose that Jurors will enforce your laws which are repugnant to the best feelings of our nature." Rick-burners are generally tried by Juries composed of *farmers*. They frequently, when they *do* convict, recommend the culprit to mercy; this shews how strongly public opinion is against the exterminating spirit of the law. But their recommendations are usually disregarded. The Jury who convicted *Charlotte Long*, recommended her to mercy, on the ground of her being the tool of another more guilty. That more guilty person has escaped. The blood of the dupe is shed. It cannot restore the property—it will not prevent the crime.—*Morning Herald, Thursday, September 19, 1833.*

In return for his courteous expressions, we will charitably give the writer in the *Globe* a word of wholesome advice at

* See proportion convicted on charges of Arson, *ante*, p. 153.

parting.* It is, that whenever he may be again detected in circulating the unsupported statements of a *King's evidence*, as the actual *confession* of a prisoner, he should at once *confess* the fact, instead of endeavouring to defend it by equivocations, which make the case worse for himself, and deprive the offence which he has committed against truth, in the eyes of a just and discerning public, of all circumstances of mitigation.

As to the general merits of the question, touching the capital punishment for rick-burning, it can hardly be doubted that we have just as deep an interest in the protection of property, and the prevention of the crimes which endanger or destroy it, as the writer in the *Globe*. The difference between us is—and we say it not offensively, but by way of illustration—just the difference between a blood-letting quack, like the notorious Sangrado, who applied the lancet and hot water to every disease, and the physician who investigates the causes of disease, and removes them. The cause of the prevalence of rick-burning is the wretchedness, added to the ignorance of the labouring classes. Let Government, instead of placing implicit reliance on the gallows, as the machine of reformation, take those steps which may easily be taken to improve their condition. Let them at the same time substitute punishments which have a tendency to *correct and reform* offenders, for the brute violence of *extermination*—under which crime grows more rapidly than it is cut down; and, it is likely the farmers' ricks may become as safe from the torch of the midnight incendiary, as they now are in France, the Netherlands, Germany, the United States of America, and other countries, where, neither this, nor any other offence against property, is punished with *death*.

Our Contemporary tells us, that if the punishment of

* Not long after this controversy it was understood that the editorship of the *Globe* had passed into other hands; to that *Journal*, therefore, as at present conducted, the above remarks do not apply.—ED.

death does not prevent the frequent occurrence of the crime of rick-burning, it is only what happens in the case of murder and other crimes. So much the worse for capital punishments, we say ; but then there is this difference in the two cases—that, although the capital punishment has little or no effect in preventing murder, the public feeling does not revolt at the execution of the person who robs his fellow-creature of the inestimable gift of life, as it does at the destruction upon the same scaffold of him who has fired a hay-stack. Indeed, where death is inflicted for offences less than murder, this last and greatest of crimes is generally more prevalent than elsewhere ; because the Legislature itself deadens, in some degree, the instinctive horror for the crime, by making the destruction of human life a matter of mere revenge or political expediency.

In an able article on penal law, which appeared in the *Westminster Review* some time ago, the author bore testimony to the superior efficacy of the mild and reforming punishments of the North American States over our own vindictive and exterminating system. He says—

‘ Great improvements have been made in the laws of the United States, and the result has been that criminal law has become more efficacious than in England ; for the infliction of the milder punishments on offenders, under penitentiary systems of imprisonment, is tending to accomplish the *diminution* of crime and the *reformation* of the punished culprit. * * * The general result already is that the number of criminals is reduced far below the average of other countries.’

Again—

—‘ New Hampshire has only half the number of criminals, although as numerous and more densely peopled, and with even more paupers, than the State of Vermont ; but in New Hampshire the laws are more mild than in the State of Vermont. In the particular class of crimes, too, arising from vehement passion, as in murders of the second degree, the *mitigation* of the severity of the law, and the improvement of the prisons in which the mitigated punishment has been inflicted, have been of singular benefit in lessening the number of offenders.’

This lesson of enlightened criminal jurisprudence which

America teaches us, our Government and our Legislators, indolent as they are, must yet sit down to learn. Frail, indeed, is the protection for life and property in a country where the morality of the people is entrusted to the care of the public executioner!—*Morning Herald, Friday, September 20, 1833.*

Attempts to make a false impression on the public mind, with regard to the results of abolishing the Capital Law of Forgery.

There have been great efforts made of late, by a certain party in the metropolis, to impress the public mind with a notion that the abolition of the punishment of death for *forgery* has led to an increase of the crime. No charge of forgery undergoes an investigation at the Mansion House that observations to the same effect are not thrown out; and, indeed, to hear those talk upon the subject who have been the systematic opponents of the reform of the most sanguinary criminal code in the civilized world, one might be induced to think, that, while the death-denouncing laws against forgery were in existence, the crime was comparatively rare—that the ingenuity of the concoctors of false bills was paralyzed—and that the genius of commercial credit reposed in full security under the protecting shade of what Lord COKE calls the “accursed tree,” unvexed by alarms of fabricated paper, and undisturbed by persecuting visions of the forger’s pen!

How far such a supposition would be from the truth, all are aware who recollect that it was *the utter inefficacy* of the capital law to repress the crime of forgery, or even to prevent its increase, which led to the change which has taken place, and which substitutes a law that *can be acted upon*, for one that *could not*—a law which subjects the convicted forger to the degrading punishment of transportation for life, which is a civil death—preceded by a term of *hard labour* in some prison at home, for a period, varying according to the circumstances of the case, from *one year to four*.—We need hardly say that forgers are a class of persons very

frequently of respectable connections, who hate labour exceedingly, and whose aversion to industrious habits generally leads to the commission of the offence. A mode of punishment, therefore, in which hard labour is an ingredient, must have something very different from an *encouraging* effect upon such persons, more especially as they know that where there is proof of the charge, the obtaining a conviction, which under the law was almost impracticable of late years, is now reduced almost to a certainty; for, the humane feelings and moral compunctions of Juries are no longer opposed to the enforcement of the law.

That *prosecutions* for forgery would increase for some time after the abolition of the capital punishment, we not only calculated upon, but we used it as one of the arguments for that abolition. While the old law was in existence, the number of forgers *prosecuted* bore a very small proportion indeed to those who were *not* prosecuted. Then it was that a Banker told the Legislature he knew himself of *forty* instances of the crime, in which, though the offenders were detected, *no prosecution* followed. Another Banker said he knew innumerable instances of the same sort. Thus, while the gallows was the supposed protection of the counting-house, its impotent terrors were laughed at by far the greater number of the traffickers in written fraud, to whose crimes the savage law of extermination—the law that confounded an offence of deceit and circumvention with crimes of violence and blood—operated as a complete Bill of *Indemnity*;^{*} nor even at a former time, when it was more generally carried into execution, had it the effect desired.

Those who recollect the horrible immolations of five, six, or seven human beings at a time, that used to take place in front of Newgate, on prosecutions of the Bank of England for the forgery of one-pound notes, also know that the forgeries of those rapidly increased, as rick-burning does,

* See the testimony of Mr. Ald. HARMER, *ante*, Vol. i. p. 17.

under the exterminating law, until Juries, disgusted with the work of unavailing slaughter, put an end to those disgusting and demoralising scenes by refusing to convict.

As if to assist those who are labouring in the "hallowed" work of endeavouring to bring into disrepute a salutary reform of an important branch of our Criminal Code, the following paragraph appeared in a Morning Paper of Tuesday :—

' The number of forged bills of exchange lately in circulation has been productive of severe losses to the commercial interest, and injurious, to a certain extent, to mercantile credit, especially in cases where all the names on the bills were not perfectly known. Further discoveries of the same kind have, it is said, been made this morning; and that one House, believed to be sufficiently strong, however, to bear the loss, has had bills lodged in its possession, as securities, to the amount of £20,000, the whole of which are forgeries.'

We can state, upon the authority of two eminent bill-brokers, that the whole of this statement is, to say the least of it, gross exaggeration. But we need refer only to the testimony of the same Journal, in its publication of yesterday, to shew upon what groundless rumours or idle inventions such alarming announcements are sometimes made. It still asserts, indeed, that the prevalence of forged bills is unfortunately true; but, with regard to the House in question, it retracts its statement in the following words :—

' We are assured that the House referred to yesterday, as holding large deposits of forged bills of exchange [*viz.* £20,000 worth], has not, at this moment, *any such* in its possession. Some of that description *may have* passed through its hands *formerly*; but they were all withdrawn previous to arriving at maturity, and the Firm cannot therefore have been subjected to *any losses* on that score.'

We know the House alluded to, and we have read the fable of "the three black crows," which illustrates very well the slender origin and monstrous growth of this frightful tale of the £20,000 worth of forged deposits. If some bills of "that description" have passed through the House in question *formerly*, it is only what happened to every

other House when the law was *capital*; for the penalty of *death* did not terrify such men as *Fauntleroy* and the *Rev. Peter Fenn* from carrying on forgery by wholesale, calculating on the impunity which, under the law of blood, so many other offenders did not calculate upon in vain.—*Morning Herald, Thursday, October 31, 1833.*

Case of three men sentenced to death at the Hertford Assizes, for Highway Robbery.—Ill effects of the new "Beer-Shops."

The Beer Bill, as we anticipated from the moment it was introduced into Parliament, is working the most baneful effects among the peasantry of England. Ample and melancholy evidence do the Assizes afford to its fatal efficacy in demoralizing the rural population, and extending the contagion of evil example and its consequent crimes. The country is studded with the hovels of dissipation which the worst characters in society may open, without any of the guarantees of good conduct which are required of the licensed victualler. The unlimited increase of public-houses was restrained, by its being imperative on the applicant to produce *testimonials to character*, and to shew that the house, for which he asked a license, was *required for the public accommodation*. We entreated the Legislature to introduce these or equivalent restraints into the Beer Bill, whatever change they might think fit to make in the power of licensing; or, if not, that at least they would add a clause *to prevent the beer being drunk on the premises*, which would oblige the labourer to take it home to his family, and thereby escape the sottish habit of tippling, and the evil association to which he is now exposed in those obscure dens of rustic intemperance, where thieves and poachers "*most do congregate*," and where the simple peasant, who goes to refresh himself after his labours, is too often tempted and tutored into crime.

The environs of towns and villages in many parts of

England absolutely swarm with beer-shops, while in less populous places they deform and defile the landscape everywhere. At the corners of woods, on the lonely common and the wild heath they are to be seen—the haunts of those characters that love secrecy and seclusion, and who lay the traps and snares of vice for the rural population of the vicinity, as assiduously as some of them lay other traps and snares for the game of the neighbouring preserves.

Many are the victims which are offered up to our angry laws on every Circuit, and whose ruin has been the beer-shop, which makes the Legislature in some degree responsible for their crimes. It has placed the temptation in their way—it has widely disseminated the materials of demoralization. We have, from time to time, remarked on the cases of persons whose initiation in crime has taken place in the beer-shop, and who have stepped from that vicious rendezvous into guilty enterprise and a prison. We must still go on, as occasion offers, until the country is relieved from this moral curse, although it may be held to be a libel deserving of a State prosecution, to endeavour to bring the Beer Act into contempt !

A new instance of the baneful effects of the beer-shop system has occurred at the Hertford Assizes, where three men, named *George Copps*, *George Hall*, and *James Biggs*, have been convicted of a highway robbery, and left for execution, by Mr. Justice GAZELEE, without hope of mercy. It appears the prosecutor, who is a gamekeeper, and the prisoners were all drinking together in the beer-shop, whence the latter followed the former on his going away, and, having followed him into a field, knocked him down, beat him with their fists, and one of them drawing a clasp-knife, such as all labourers have to cut their bread and cheese with, pretended to be about to cut his throat, which, no doubt, they might have done if they had any real intention of doing it, for nobody interrupted them ; but they were not so bloodthirsty as to take that course of silencing

for ever the only witness of their crime. The prosecutor was able to walk home afterwards ; so that, although he had been ill treated, he received no blow that disabled him. Some money was taken from him—we are not told how much—and his watch was demanded, but it is not said in the report of the trial whether it was taken or not. It appears there was no moon on the night in question ; but the prosecutor stated on the trial that the starlight was sufficient to enable him to know the faces of his assailants. Two witnesses, however, swore that they heard the prosecutor say that he did not, on the night of the robbery, know the men who had attacked him, but that he identified them on seeing them next day.

It behoves Courts of Justice, even where the most heinous of all crimes are charged, to be very cautious how they take human life on the evidence of a solitary witness to identity, however positively he swears, more especially when the crime has been committed by night, without a moon, and when the mind of the prosecutor has been under circumstances of great alarm and confusion. Fatal mistakes have occurred in this way. The records of the criminal history of this and other countries afford melancholy proofs of the fallibility of human evidence under such circumstances.

But supposing the guilt of these men had been placed beyond all doubt, we still think their crime is not one which, taking the whole of the circumstances into consideration, ought to be visited with the extreme penalty of the law. The culprits are the victims of a demoralizing system, which the Legislature itself unfortunately established. It is stated by the Chaplain of the Preston House of Correction, that of 189 offenders of all classes, there were 116 who attributed their crimes to the temptations held out to them by the alehouses and beer-shops. It is frightful to think how the Legislature has, by one stupid and unfortunate measure, assisted the march of demoralization. But we forewarned

our rulers and Parliament at the time, of the moral and social consequences of it.

If the judicial authorities are satisfied of their guilt, let them be severely punished; but is it right or consistent with *public policy* to take their lives,* and thereby *instigate* other robbers to take the dreadful precaution of getting rid of the evidence of an inferior crime by the commission of a greater one?

We would advise all persons who take an interest in the reform of criminal justice to look into the excellent little work of Mr. WOOLRYCH, the Barrister, entitled "*The History and Results of Capital Punishments in England*,"† in which the hopelessness of extirpating, or of materially diminishing the crime of robbery by *the gallows*, is practically demonstrated. We have left ourselves no room, at present, to make any extracts; but the facts and tables which the author adduces are worthy the attention of all Legislators. We would also suggest to those in authority the perusal of a small pamphlet containing "*Observations on the Case of David Gulliford and Benjamin Bartlett, executed in May, 1832, at Ilchester, for an assault and robbery*," ascribed to the pen of Sir Henry STRACHEY, Bart.,‡ who, we believe, has served the office of High Sheriff of the County of Somerset. He truly observes that our code has not yet attained the proper standard of reason and humanity—that it is still blackened by cruel penalties, opening by far too many vistas to the gallows. Why, we ask, persevere in those human sacrifices, against which public feeling revolts, and which produce only spectacles of blood that are barren of all moral benefit?—*Morning Herald, Wednesday, December 4, 1833.*

* These three convicts were afterward reprieved. See *Herald* of December 11, 1833.

† Published by Saunders & Benning, Fleet Street—1832. To this valuable work are added full Tables of Convictions, Executions, &c.

‡ See *Morning Chronicle* of April 5—9, 1833.

Disapproval—by the COURT OF ALDERMEN—of the novel practice of interrogating prisoners at the Mansion House.

The COURT of MAYOR and ALDERMEN of the City of London have awarded their thanks to Sir Peter LAURIE, the late Lord Mayor, “for the courtesy which marked his conduct in presiding over the Court—for the urbanity displayed at all times in his intercourse with his colleagues in the Magistracy, and all classes of his fellow-citizens—and for the hospitality with which he sustained the ancient dignity of his important office.” We expressed our sense of the merits of Sir Peter LAURIE, as Chief Magistrate of London, immediately on his retiring from that office—more especially did we testify to the impartiality which he had displayed in affording facilities, for the Constitutional expression of their sentiments upon public questions, to his fellow-citizens of all political opinions. But we noticed* at the same time, “more in sorrow than in anger,” the innovation which he attempted to introduce into the practice of Criminal Law by his mode of examining witnesses.

We speak not of a departure from that calm dignity which should characterize the Magistrate in the discharge of the grave and serious duty of administering justice; we allude to the peremptory interrogation of the prisoner, which is contrary to the law of England—and every person in this country accused of a crime has a right to be dealt with according to the ancient and established practice of the law, until it is altered by an *Act of the Legislature*. If we thought the old practice was bad, we would advise an application to the Legislature to reform it; but we should not like to see, even in that case, legislative powers assumed by the civic Magistrate, or by any other. So far are we, however, from thinking the existing practice a bad one, that we consider it founded in justice and wisdom, and have given our reasons for holding that opinion.†

* *Ante*, p. 81.

† *Ante*, p. 84, et seq.

We could wish that our Criminal Code were as mild as that of France, with regard to *capital punishments*; but we hope the day will never arrive when our Judges shall be compelled to copy the French mode of *examining prisoners*, notwithstanding Sir Peter LAURIE stated, that, although the JUDGES disapproved of his practice, it had met with the approbation of the *Home Office*; thus preferring the opinion of a *Secretary of State* touching the administration of justice to the authority of the Constitutional Judges of the realm, *whom the law has expressly rendered independent of the Crown for the greater security of the life and liberty of the subject.*

It gives us satisfaction to see that the Court of ALDERMEN have thought it their duty to notice, in terms of disapproval, that practice, alien to our law, of examining prisoners, which made the criminal investigations at the Mansion House last year exceptions to all others in the kingdom, and which led to the sending several important cases to trial under strong impressions of prejudice from the presiding Magistrate, whose duty it should be, not only to protect the public against crime, but the prisoner against false accusation. In reference to this subject, the COURT of MAYOR and ALDERMEN say—

‘ That while this Court cannot concur in the principles upon which the late Lord Mayor acted in his examination of prisoners brought before him on criminal charges, they have great pleasure in recording their opinion that in all such proceedings his Lordship has acted in the exercise of an honest, although, in the opinion of this Court, of a mistaken judgment.’

This we take to be a correct view of the case. The honesty of the late Lord Mayor is above suspicion—it was his judgment that was in fault; but if the novel practice—novel, we mean, in the Constitutional history of this country—had not been noticed with censure, it might have led to the repetition of an error most injurious to the interests of justice.

On a former occasion, when giving our reasons for censuring this practice, we alluded to the emphatic condemnation

which the mode of examining at the Mansion House received from the Learned Judges, Mr. Baron VAUGHAN and Mr. Justice PARKE, when presiding at an important trial in the Old Bailey. Though we regard the criminal *laws* of England as far from being yet the best that could be devised, we cannot help considering the *administration* of criminal justice in the Courts of the superior Judges of the land to approach as near to perfection as can be conceived, where guilt or innocence has to stand on its deliverance before human tribunals.

We cannot take leave of this subject, for the present, without bearing testimony to the judicious, impartial, and humane manner in which the present Lord Mayor, Alderman FAREBROTHER, discharges the painful office of investigating criminal charges. To every man of well-constituted mind, the state even of convicted criminals is one rather to excite a sense of pain for human degradation, than one of triumph: but to decide upon a charge of crime before the whole of it is heard, or to use expressions towards the prisoner, as some Magistrates do, which indicate a passionate determination only to look to one side of the case, betokens a mind unqualified to preside on the humblest seat in the temple of Justice. The present Lord Mayor is not a man who surrenders himself to *first impressions*, which are always against the prisoner, inasmuch as the prosecutor has the first word. He holds the scales of Justice even—he is considerate and passionless. He does not consider accusation to be tantamount to proof; but seems to think that justice and the public interests require of him as much care to protect innocence as to convict crime.—*Morning Herald, Saturday, December 7, 1833.*

*Mitigation of the French Criminal Code in the Mauritius
disallowed by Lord GODERICH.*

The dispatch addressed by Lord GODERICH, in March last, to Major-General NICOLAY, relative to the Penal Code

of the Mauritius, is important enough to merit a few observations.

LORD GODERICH complains that the legal functionaries of the Colony, to whom was entrusted the task of compiling a new set of laws on the model of the modern Code of France, or the "CODE NAPOLEON," violated the trust reposed in them, by deviating from the model, and rendering the new system of criminal justice more mild than its original, with regard to offences of a treasonable and seditious nature. His Lordship, therefore, as Colonial Secretary, advised His Majesty to disallow the ordinance under which the law had been promulgated in the Colony, and it was disallowed accordingly, as our readers are aware.

It appears that a copy of the new Penal Code was, immediately on its compilation, forwarded to Lord GODERICH, who did not, at that time, detect the *alarming* deviations from the severe provisions of the original, which have marred the character of the treason laws, for even in the CODE NAPOLEON the laws of *treason* are nearly as merciless as our own. The reason he gives for the oversight is, that the copy which he received was *in French*!

But what does he do? He writes out to the Governor to furnish him with an English version. This delays the discovery of the alterations during the time necessary to send out a dispatch to the Colony, and receive one back. In the meantime the Colony is under the perilous sway of this *alarmingly merciful* Code; yet, although agitation there was in abundance, on the occasion of sending Mr. JEREMIE to the Colony, in two official capacities, which, according to the French laws, are incompatible, the public peace was restored without its being thought necessary to offer up any victims to political vengeance.

LORD GODERICH says he pointed out the "inconvenience, "and even impropriety, of calling for His Majesty's assent to "a law written throughout in a foreign tongue." We confess we see no inconvenience in it, unless His Majesty's Ministers were unacquainted with the French language:

—nor any impropriety because the new Code was compiled from the French for those who had been, up to our conquest of the Colony, French subjects, and who speak the French tongue. To them English is a foreign language—as foreign as the Norman language, which the Conqueror introduced into our Courts and all our acts of State, was to his Anglo-Saxon subjects, and of which the language of the Royal assent given by the King of England to Acts of Parliament is still a badge and a memorial. What greater impropriety was there in the King of England saying “*Le Roi le veut*” to a code of laws drawn up in the French language for his French subjects, than in applying the same words to an Act of Parliament drawn up in the English language for his English subjects? Lord GODERICH is more ingenious in hitting upon a novel excuse for ignorance in a Colonial Secretary than fortunate in finding a sufficient one.

Having been ourselves among the first, if not the very first opponents of negro slavery in the Daily Press—having waged a more uncompromising and disinterested warfare than Lord GODERICH ever did against that system which gave man a property in the person of his fellow-man, we cannot be disposed to look with too favourable an eye at the acts of slave-owners endeavouring to perpetuate that unhallowed system.

But, because we hate slavery, with its uplifted scourge, its chains, and its trembling victims, it does not follow that, under pretence of abolishing it, we should become enamoured of cruel and merciless legislation. The friends of humanity were led into that error when, upon the abolition of the Slave Trade, they procured a law to make the stealing an African for the slave-market a *capital* felony. The consequence is, that the law is never executed, and never can be. Man-stealing is *one* species of barbarism, and the law by which it is attempted to be put down, is *another*.

Let us see now what are the too merciful alterations of

the penal law of Mauritius, of which the Colonial Secretary of a liberal Cabinet so bitterly complains. We quote the following passage from the dispatch :—

• I will now state shortly what are the changes and departures
• from the model on which the Criminal Code of the Mauritius was
• framed, to which I have thus referred. The 87th Section of the
• Criminal Code of France corresponds to the 75th of the Colonial Code.
• They both denounce death and confiscation as the penalties of an
• attempt or plot against the life or person of any member of the Royal
• Family, or having for its object to destroy or change the Government,
• or the order of succession to the Throne. The Code of France, how-
• ever, in the same Section, contains, while that of the Mauritius
• omits, the following additional definition of attempts or plots punish-
• able by death—"Any attempt or plot to excite the citizens or
• "inhabitants to arm themselves against the Royal authority."
• These significant words would have precisely reached the case of
• the armed Associations then in progress; and the omission of them
• must have been designed for the express purpose of sheltering the
• offenders from justice.'

It will be seen from the above, that the legal functionaries of the Mauritius still retained the two-fold penalty of *death* and *confiscation* of property, for any attempt or plot against the life or person of any member of the Royal Family, or having for its object to *destroy* or *change* the *Government*, or the order of succession to the Throne. This, one would think, was a wide scope enough for the operation of the scythe of judicial death, if real plots existed, and real attempts were made for the subversion of the Government.

But Lord GODERICH is dissatisfied, because the words "any attempt to excite the citizens or inhabitants to arm themselves against the Royal authority" were omitted under the head of offences punishable with death. Now we say that if such attempt to excite the inhabitants to arms were in furtherance of a plot to subvert or change the Government, or the order of succession, it would be reached by the ~~or~~ words "any attempt or plot" for such objects; but ~~were~~ only to get rid of some real or supposed local

grievance, unconnected with any intention to subvert the Government, &c., why should it, though a serious crime, be punished as that genuine unequivocal treason that aims at the overthrow of the very foundation of society?

It is not stated by Lord GODERICH whether the mention of this last offence was altogether omitted, or whether it was only removed from the list of crimes punishable with death to those upon which a less dreadful punishment was denounced. He seems to think that nothing is done for the protection of the public peace, except through the instrumentality of laws of blood, although the history of his own country has afforded abundant experience of their barbarous inefficacy, and he had before his eyes the recent example of the merciful and magnanimous conduct of the people of France, who were satisfied with inflicting a punishment less than death upon those traitor-Ministers who, in the attempt to subvert their liberties, sacrificed hecatombs of the people by the sword of civil slaughter.

The confiscation of property for the crime of *lèse Majestatis* is one of the great blemishes of our English laws of treason, because it punishes the innocent for the guilty—it takes their subsistence from the destitute widow and the infant in the cradle, because of the *husband's* and the *father's* crime. This, ROMILLY condemned in the English law; but Lord GODERICH approves of it in the Code of the Mauritius.

Let us follow Lord GODERICH further—

‘Again, the 93d Clause of the French Code provides, that any person taking the command of an armed force, without a legal sanction or motive, shall suffer death. But in the Mauritius, the words in the corresponding article numbered 82, “*sans droit ou motif légitime*,” are changed for the expression “*sans droit légitime ou motif excusable*.” Thus the persons embodying themselves in arms against the Government were provided with a legal protection, if they could induce a public prosecutor, closely connected with them, and Judges amongst whom some of their own partisans were to be found, to regard the motive of their proceedings to be excusable. A plea so comprehensive would embrace every imaginable apology, and convert

‘ the Court from a tribunal administering a definite law, into a body
 ‘ authorized to decide upon questions properly belonging only to the
 ‘ King, in the exercise of His Majesty’s prerogative of mercy.’

His Lordship objects to the addition of the epithet “*excusable*” to the word “*motif*”—but surely in practice the word would be understood to mean any motive excusable in point of law. So it is with regard to homicide in England, for which, if a man can shew he had an *excusable* motive, he is saved from the penalties of either murder or manslaughter. But LORD GODERICH seems, like our enactors of “felonies without benefit of Clergy” in former days, to think nothing done in the way of criminal legislation unless *Death* display his angry terrors everywhere. “Let there,” said the great LORD BACON—more than two hundred years ago—“let there be no rubrics of blood!”—“Let there,” says LORD GODERICH, as Colonial Secretary to a liberal Cabinet in the nineteenth century—“let there be none but *death-denouncing* laws for political offences, while I am the Colonial Justinian ;” and, accordingly, finding that the word “DEATH” was not repeated sufficiently often in the Code of the Mauritius, he issues his decree and says, “the Colony must therefore revert to that ancient criminal code which I have already admitted to be *barbarous in its provisions, and inapplicable to the present times.*” So much for English statesmanship in this age of intellectual improvement !*—*Morning Herald, Saturday, December 21, 1833.*

Case of a man capitally convicted, at the Lewes Assizes of an Attempt to murder, under LORD LANSDOWNE’S Act.

A man named *Doolan*, if we recollect right, a native of Ireland, was lately convicted, at the Assizes of Lewes, of the crime of attempting to drown a little girl—his daughter.

* Accounts were received on Saturday from the Mauritius, *et* Cape of Good Hope. The papers contain a Government notice, with

For this offence his life is forfeited to the law, it being one of the *new* capital crimes created by Lord LANSDOWNE'S Act, who, during his short occupation of the Home Office, under Mr. CANNING'S Anti-Reform Administration, distinguished himself as a legislator, by increasing the already terrible catalogue of capital punishments. The LANSDOWNE Act, contrary to our old law, made an *attempt* to destroy life equally penal with actual murder, and thereby took away the *locus penitentiae* from the offender, which it ought to be the policy of the Legislature rather to encourage.

By this change in the law, the person who attempts to take the life of another, in pursuance of some guilty motive or instigation, and who, struck by remorse, or withheld by a sudden impulse of humanity, or dread of consequences, stays his hand, after he has proceeded so far as to make his original intention apparent, is consigned to *the same* fate as the obdurate, unrepenting murderer, who *completes* his work of blood, and exults over the lifeless body of his victim. So much for the law as altered in the nineteenth century, by a legislator who had formerly expressed enlightened sentiments in favour of the mitigation of the Criminal Code. Now let us glance at the application of the law in the particular instance.

It appeared in evidence that the prisoner went out to bathe in the sea, and took the child along with him, but came back without it. Some person observed this, and not obtaining a satisfactory answer from him on enquiring for the child, sought for, and found it nearly drowned. The life of the child was saved. The prisoner was very much intoxicated at the time, and his defence was that he had taken the child into the sea to wash it, and had no intention of drowning it. The Jury found him guilty of the attempt,

an extract of a dispatch from Mr. STANLEY, *revoking the strong censure passed by his predecessor* [Lord GODERICH] *upon the compilation of the Penal Code.*—*Morning Herald*, December 15, 1834.

but strongly recommended him to mercy, and gave as their reason the prisoner's state of intoxication at the time the act was committed.

The Learned Judge told the Jury, and very truly, that, according to the law of England, drunkenness being an act by which a man voluntarily impairs his reason, is no ground for the mitigation of punishment. But we rather think the Learned Judge will agree with us in the opinion, that when a person is charged with a crime, the great object to which the evidence is to be applied, is, to ascertain whether he had the *criminal intention*. Now if the drunken man had deliberately cut the child's throat, or thrown it off the top of a precipice, the *murderous intention* would be manifest from the act itself, and the plea of drunkenness would not excuse the crime, or even mitigate the punishment. But in the present case the *criminal intention* is *not so clear*. It is possible that a child might be drowned in the sea while a person was washing it, and the thing is still more possible if the person happened to be drunk. It is because the *murderous intention* may be *doubted* that we presume the Jury recommended the prisoner to *mercy*, and for the same reason we take the liberty of bringing the case under the notice of those by whose advice the prerogative of mercy is exercised.*—*Morning Herald, Wednesday, January 1, 1834.*

Observations on the Maidstone Journal's Remarks.

We extract from the *Maidstone Journal* the following practical commentary upon the *moral* effect of those sanguinary spectacles which are of such frequent occurrence in this Christian country, and by which the name of Justice is disgraced, and the civilization of the people obstructed:—

‘Allen's body, after hanging the usual time, was taken away by

* The recommendation of the Jury was, we believe, subsequently attended to, and a reprieve granted.—E.D.

‘ his master, Mr. Godfrey, in order to be buried at Lydd. The other
 ‘ corpse was buried in our churchyard. The spectators, towards the
 ‘ close of the execution, amounted to several thousands, but unhappily
 ‘ the lamentable scene produced very little proper effect upon them.
 ‘ Profane and obscene jokes were heard on every side, and not a few of
 ‘ the persons present were in a state of intoxication ! Strange to say,
 ‘ the greater part of the crowd consisted of women, whose conduct
 ‘ evinced an utter want of feeling and decency :—so much for the effect
 ‘ of example which it is alleged is intended to be produced by our
 ‘ frequent infliction of the penalty of Death !’

When ——— indites another essay on the “ philosophy of hanging,” and in praise of the legislative wisdom which indulges the populace with those holyday spectacles of human sacrifice, we wish he would point out the precise degree of edification which the rabble of Maidstone—male and female—received from the immolation of the two criminals, whose expiring agonies were celebrated by the drunken orgies of a crowd assembled to do suitable honour to a festival of blood. If the philosopher could also explain the mode in which the *moral* impression of such brutalizing spectacles operates to deter the spectators from committing similar crimes to those which call forth their levity under the gallows, he would confer a great obligation on all who still continue to admire our exterminating system of punishment, without being able to say how it produces any other consequence than to make examples of unavailing cruelty familiar* to the people.—*Morning Herald, Friday, January 17, 1834.*

* ————— Hanc tollite ex civitate, Judices !—hanc pati nolite diutius in hac republicâ versari: quæ non modò id habet in se mali, quòd tot cives atrocissimè sustulit, verùm etiam hominibus *lenissimis* ademit *misericordiam consuetudine incommodorum* !—Away with this [cruelty] from the State !—Allow it not, O Judges ! to prevail any longer in the Commonwealth ! It has not only the fatal effect of cutting off so many of your fellow-citizens in a most atrocious manner, but it hath even banished from men of the *mildest disposition* the sentiment of MERCY, by the *familiar practice of SLAUGHTER* !—
 —CICERO.

Meeting of the HOWARD SOCIETY in Dublin, at which the Hon. Baron SMITH presided.—Address to HIS MAJESTY.*

We direct the attention of our readers to the Resolutions of the Meeting of the HOWARD SOCIETY, in Dublin, in our columns to-day. The chief object of that SOCIETY is, as

* At a former General Meeting of the HOWARD SOCIETY, held at the Rotunda, Dublin, January 30, 1832—when Admiral OLIVER presided—on the motion of Dr. SADLEIR, S. F. T. C. D., seconded by Dr. CLARKE, the following individuals received the thanks of the Meeting for their zeal in promoting the cause of humanity, and were nominated Honorary Members :

Vis. M. M.

General LAFAYETTE, *Deputé.*†

Victor DE TRACY, *Deputé et Colonel de la Legion d'Artilerie de la Garde Nationale de Paris.*

GIROD de l'AIN, *President de la Chambre des Deputés.*

GUIZOT, *Deputé.*

ODILON BARROT, *Deputé.*

BARTHE, *Minister de la Justice et Deputé.*

• ISAMBERT, *Ancien Deputé, Conseiller à la Cour de Cassation, Chambre Criminelle.*

LUCAS, *Inspecteur-General des Prisons de France.*

PARIS.

Rt. Hon. Lord DOVER.

J. Sydney TAYLOR, A. M.

Thomas CLARKSON, A. M.

William ALLEN, Esq., F. R. S.

John T. BARRY, Esq.

William CRAWFORD, Esq.

LONDON.

Rt. Hon. the Lord PROVOST, J. LEARMOUTH, Esq.

Rev. Archibald ALISON, L.L. B.

Alexander CRUICKSHANK, Esq.

Robert Kaye GREVILLE, L.L. D.

Edward CRUICKSHANK, Esq.

EDINBURGH.

† General LAFAYETTE acknowledged his election as an Honorary

the name of the great reformer of prisons by which it is designated imports, the promotion of prison discipline on a sound and rational principle ; and, subsidiary to that, is the mitigation of the Criminal Code, and the substitution of corrective and reforming punishments for such as are cruel, revengeful, and exterminating. We need not say to those who are acquainted with our own views as to the reform of the Criminal Law, how sincerely we desire the success of the benevolent and enlightened objects which the philanthropic founders of the HOWARD SOCIETY are anxious to promote. We are glad to find that the Learned and Venerable Judge, BARON SMITH, most heartily assists the efforts of the Society to redeem our prisons from the reproach of being hotbeds of crime, and our laws from the stain of

Member in the following terms:—

‘ Paris, 16 Avril, 1832.

‘ Monsieur,

‘ J’ai regu, avec une profonde reconnaissance, l’honneur que la SOCIÉTÉ D’HOWARD a daigné me faire, en me donnant un témoignage de sa précieuse approbation, et en ajoutant mon nom à la respectable liste de ses Membres. Personne ne pouvait, plus vivement que moi, sentir ce double avantage. Je serai toujours uni de cœur aux importants travaux de la Société, et je chercherai à mériter la faveur qu’elle a bien voulu m’accorder. Soyez assurés, Monsieur, pour être auprès d’elle l’interprète de ma gratitude, de mon dévouement, et de mon respect.

‘ LAFAYETTE.’

‘ Monsieur John M’CAY, Secrétaire Honoraire
‘ de la SOCIÉTÉ D’HOWARD.’

[*The late General LAFAYETTE’s sentiments on the subject of the Punishment of Death are thus stated by one of his biographers.—ED.*]

“ Capital punishment was held in horror by LAFAYETTE, who constantly raised his voice against that monstrous penalty. He thought that society had no right ‡ to take away what it could not restore, or to exercise the power of life and death upon one of its members, especially in matters of political and religious opinion, which belong to what man holds most dear, most sacred, and most inviolable—liberty of conscience. He constantly inveighed against the Exceptional Tribunals, which in his opinion were nothing else than a terrible instrument placed in the hands of Despotism, to give an *appearance of legality* to its most atrocious acts—to murder in the name of THE LAW.”——M. Jules CLOQUET’S *Recollections of the private Life of General LAFAYETTE*,

‡ *Ante*, Vol. i. p. 66.

human blood “unprofitably shed.”* Its success cannot fail to be greatly advanced by the influence of his eloquence and

* [Such of the Resolutions as were immediately connected with the Reform of the Criminal Law, more especially as it concerns the subject of Capital Punishments, we subjoin.—ED.]

‘HOWARD SOCIETY, FOR THE IMPROVEMENT OF PRISON DISCIPLINE, AND FOR THE MITIGATION OF THE PUNISHMENT OF DEATH.

‘At the DUBLIN Annual Meeting at Morriasson’s, on Monday, the 20th January, 1834, the Hon. Baron Sir William C. SMITH, Bart. in the Chair.—

‘The following Resolutions were agreed to. * * * * *

RESOLVED—‘That this SOCIETY has to acknowledge with much
‘gratitude the salutary changes effected in the Criminal Code,
‘especially during the two last Sessions of Parliament; and while
‘expressing a conviction of the beneficial consequences of those
‘Enactments, it would beg at the same time to declare its per-
‘suasion that the consequences might be likely to become still
‘more beneficial, if a discretionary power were vested in the
‘Judge, enabling him, within limits, to proportion the punishment
‘to the circumstances of each particular case and degree of crimi-
‘nality which it involves.

RESOLVED—‘That the especial thanks of this SOCIETY are due, and
‘are hereby given, to J. SYDNEY TAYLOR, A. M., Barrister-at-
‘Law, Honorary Member of this Society, for his most valuable
‘writings on the Criminal Code, which have tended so much to
‘enlighten the public mind on this important subject, and to pro-
‘mote those salutary changes already accomplished.

RESOLVED—‘That the following be nominated Honorary Members
‘of the HOWARD SOCIETY:—The Right Hon. Lord SUFFIELD;
‘Thomas B. LENNARD, Esq. M. P.; Thomas WRIGHTSON,
‘Esq., author of an important publication on the Punishment of
‘Death.’

Baron SMITH having left the Chair, John CRAMPTON, Esq. was requested to take the same.

An Address to His Most Gracious Majesty WILLIAM THE FOURTH was then prepared, and read by the Honourable Baron, which was received with acclamation by the Meeting.*

RESOLVED—‘That the thanks of the Meeting are due, and are

* For copy of the Address, see page 188.

high moral character, as well as by the light of practical wisdom which he can throw on the question of penal justice, from his great judicial experience.

It will be seen that an Address, temperately and judiciously worded, to His Most Gracious MAJESTY, was voted by acclamation, thanking the SOVEREIGN, on behalf of the inhabitants of the City of Dublin, for the great improvement which the wisdom of the Legislature has effected in the Criminal Law, and praying that penalties not more than adequate to the offence, and consonant to the benign principles of Christianity, may be universally established, so as to engage all the conscientious and enlightened classes of society to *combine in carrying the laws into unobstructed operation*. Thus sanguinary law revolts the feelings of the Irish people—as it does those of the British public.—*Morning Herald, Thursday, January 30, 1834.*

[The Address referred to in the foregoing paragraph we shall annex. It assumes, if possible, greater interest from the fact of its having proceeded from the pen of one who is now no more—the Learned and Venerable Baron SMITH—who also moved it at the Meeting. In doing so, this excellent man let fall some remarks which evinced his own becoming sense of the duties it had been his lot to discharge

‘ hereby given, to our Vice-President, the Hon. Baron Sir
‘ W. C. SMITH, for his kindness in presiding on this occasion,
‘ and for his uniform zeal and humanity in forwarding the objects
‘ of the SOCIETY.

‘ JOHN M‘CAY, *Hon. Sec.*’

When these Resolutions appeared in the (London) *Morning Post*, they were, with great candour, remarked upon in the following terms:—
“ We beg to direct the attention of our readers to the Resolutions of
“ the Dublin HOWARD SOCIETY. Whatever opinions we may hold
“ upon the subject, we cannot but acknowledge that the sanction and
“ countenance of the Honourable and Learned Baron SMITH, qualified
“ as all who know him will admit, to decide upon the merits of so
“ important a subject, are of considerable weight.”—*Morning Post*,
February 3, 1834.

during a long judicial life,* that was then near its close. Well might the Chairman (Mr. CRAMPTON) say, as he did before the Meeting separated,—that “the names of HOWARD and SMITH will go down to posterity together, as amongst the brightest ornaments of their country.”—ED.]

“TO THE KING’S MOST EXCELLENT MAJESTY.

“We the undersigned Inhabitants of the City of Dublin and its Vicinity, beg most humbly to approach Your MAJESTY with the avowal

* Sir William Cusack SMITH was created a Judge at a very early period of life. Not long afterward it was his painful duty to let “the law take its course” in a case, we believe, of murder, where, as it subsequently turned out, the convict was innocent—he had fallen a victim to the fallibility of human tribunals! The circumstance so deeply affected the mind of this humane Judge, that he is said ever after to have entertained an almost insuperable aversion to passing a sentence which, when once inflicted, can never be recalled.

The views entertained by the Venerable and Learned Baron SMITH on the important question of the *punishment of death*, appear to harmonise so fully with the opinions of the age, that we cannot refrain from placing before our readers the following report of a Speech, delivered in the presence of the Learned Baron, by the Seconder of the Address to HIS MAJESTY, January 20, 1834.

‘Mr. LAWLESS rose to second the Address to HIS MAJESTY moved by Baron SMITH, and began by shewing that he believed he might justly say the benevolent and humane sentiments it so eloquently and beautifully expressed, found an echo in every bosom in that room. (*Loud Cheering.*) He was greatly restrained in speaking of that powerful appeal to the Royal feelings, by the presence of its enlightened and accomplished author; but he would not deny himself the pleasure, and, on the present important occasion, the right, to bear his attestation to the sound philosophy of the doctrine, as well as to the beauty of the elocution in which these doctrines were conveyed. It comes powerfully from one of the most respected Judges of the land, (which his own example so uniformly illustrated,) that the laws administered in mercy are always the best calculated to promote the correction of the criminal, and the *security of society*—that *sanguinary punishments defeat themselves*—that the greatest offenders have too often found protection in the humanity of the Judges and Juries—that rather than inflict the extreme penalty of the law, for the crime with which the prisoner was charged, he is not unfrequently put on his trial for a lesser offence, and thus rescued from that cruel punishment, which would have been visited on the crime he committed. When a Judge of the land comes forward, after a long experience of the criminal law, and its effects on the morals and conduct of society, to recommend the abolition of those sanguinary punishments which disgrace our judicial records, will may the people follow him with their best efforts to promote an object sanctioned by wisdom, experience, and justice. (*Cheers.*) How consoling, then, to reflect that all men of all opinions, as regarding public affairs, have one neutral ground to stand upon, when they make a common or united effort to humanise the criminal code of the law under which they live—to improve the morals of their fellow-men by kind and benevolent means; and demonstrate to the world, that the rope

of our delight at the great improvement which legislative wisdom has made in the Crown Law.

"We might, for example, dwell upon that signal amelioration which, on convictions for manslaughter, enables the Court, in an offence including various shades of guilt, to make the punishment commensurate with the criminality in each case.

"But it seems more pertinent to our, we trust, humane and moral objects, humbly to express our gratitude for those amendments which have been effected in the Criminal Code since the accession of Your Gracious MAJESTY to the Throne.

"Yet, we entertain an earnest hope that Your MAJESTY will be of opinion, that more still remains to be accomplished, and that the same principles that have produced changes by which the ends of humanity, and we would even say, of Christianity, have been promoted—that these principles are comprehensive enough to dictate more than has been achieved, and consummate an improvement so auspiciously begun.

"We are far from certain that the imputation may not still be cast upon our Country, of having a Code of Criminal Law that is in some instances too severe, and calculated to set the most amiable feelings of the human heart in merciful array against its operation. A consequence of this might be that the guilty would be secured from punishment altogether; and escape, if not through the compassionate lenity of our tribunals, through the humanity of the very party who had been injured by their offence.

"We would, therefore, with all submission, express our humble hope, that Your MAJESTY, with the consent and assistance of the other legislative branches, may graciously proceed in Your paternal course, until the Criminal Law shall have been so modelled, that penalties consonant to the benign principles of that Christianity which hallows or forms a portion of the basis of our law—penalties not more than adequate to each offence—shall be universally and coherently established; and the Code, thus recommending itself to consciences as at once rational and tender, engage all the well-conditioned orders of society to combine in carrying the laws into unobstructed operation."

Retirement of Baron BAYLEY from the Bench.

The retirement of Baron BAYLEY has deprived the Bench of one of its greatest ornaments. As a lawyer, he

"and the axe are bad reasoners to make men obedient to law, or respectful to authority! Where is the law so well obeyed as where it is administered by a merciful Judge? The community makes common cause with him, and the violator of the law is an object of hatred and detestation. (*Cheers.*) I congratulate myself on having the opportunity to second the Address, and congratulate its respected eloquent author on its production."

has scarcely left his equal behind him for extensive knowledge of the science of law, sound judgment, and legal acumen—as a Judge, his patience, serene temper and spotless integrity rendered him a model of judicial dignity and virtue. The known worth of his character and the kindness of his manner endeared him to the profession. His independence, humane disposition, and purity in the high station which he so long filled, have made his resignation of office a public loss, which will not be easily repaired. The sincere regret and esteem of the Bar and of society follow him into private life, and his name will henceforth be enrolled among those of the righteous Judges who have held the balance with equal hand, and “seasoned justice with mercy.”

The writer of this never having had any intercourse with the venerable personage to whom this tribute of respect is paid, except in the discharge of professional duties, cannot be accused of that personal bias which sometimes unconsciously gives to the portrait, which the hand of friendship sketches, the colours of the flatterer. It is of as great moral utility and national importance that incorruptible virtue in high places, and more especially on the judgment-seat, should be held up to public admiration, as that vice and corruption, when clothed in the robes of power, should be exposed, scorned, and detested.

The brand which impartial history has stamped on the memory of a SCROGGS or a JEFFRIES is a warning to all who might be induced to pervert the administration of justice to the oppression of the people. It is the final and irreversible sentence of a tribunal, before which they who judge others must themselves be judged, and from which they can have no appeal on earth. As there is no infamy greater than the perversion of the laws, to the gratification of the passions, or the ensuring the personal advantage of those to administer them, so there is no praise too great for the duct of those appointed guardians of the laws who make

their office revered by the purity and clemency with which they exercise it, who shew in all their judicial actions that neither fear nor favour taints their decisions, and that they offer from their hearts a pure allegiance to the majesty of justice. After what we have stated, we need not say that Baron BAYLEY was of the latter class of Judges ; and though some have displayed more splendid talents, and others have been clothed with more of worldly honours, none have merited a purer fame for preserving from blemish the sanctity of the great trust, which he now returns undefiled to his Sovereign.

On the celebrated trial of Mr. HUNT and others, for the share which they had in the deplorable occurrences at Manchester in the year 1819, Mr. Justice BAYLEY, by his exemplary patience of investigation, his conscientious anxiety to afford the fullest means of defence to the accused, his dispassionate and impartial conduct, raised the judicial character in the eyes of an observant public ; but it has since been thought that the virtues of the Judge impeded the fortunes of the man. It has been said, that, had he acted as a partisan on the Bench—had he lent himself to the vindictive feelings of party—had he expounded the law in the voice of passion rather than serene justice, he would have risen to a higher station on the Bench. We would fain hope the assertion is groundless ; but, whether it be true or not, the fact is undeniable, that he remained, from that day to this, an example of unswerving but neglected integrity. It reflects no credit on either of the political parties who alternately govern the nation, that the abilities, learning, and virtues of Judge BAYLEY found no favour in their eyes. He has now the proud consciousness, which can never be taken away from him, of having preserved the purity of the ermine from all political stain ; and we can only hope, that whoever may be clothed with the judicial mantle which he has just put off, will leave it as unsullied to his successor.

He has been accused, in a Contemporary Journal, of

severity to the Press. We imagine that in this instance the oppressive spirit of the law is imputed to the Judge whose duty it is to enforce it. In answer to this charge we will adopt the words of the *Standard* in preference to any which we could ourselves employ—

‘It has been well and truly said that the business of a Judge is *‘ legem dicere non legem dare*, and it is one of the worst consequences of our execrable libel code that it leads unthinking men, who confound the mischief of the law with the disposition of the faithful Magistrate pronouncing it, to entertain an ill disposition towards the ministers of justice themselves—officers whom it is above all things important to preserve in the affections and veneration of the people.’

In our opinion the inhuman spirit of the criminal laws might as well be attributed to the Judges whose painful duty it is to administer them, as that they should be made responsible for the anomalous character and oppressive rigour of the law of libel. The salutary and enlightened reforms introduced into our criminal code, of late years, have relieved our Judges of a considerable portion of that unpleasant duty against which—we have it on the authority of Judge BLACKSTONE—the judicial conscience was apt to struggle, and often evaded the edicts of blood by humane ingenuity. We have seen Baron BAYLEY preside at important criminal trials, and on such occasions pure and passionless Justice never had a better representative. The more atrocious the crime of which the prisoner stood accused, the greater was his anxiety to prevent the prejudice which such a charge would naturally excite from operating against the fullest and calmest investigation of the case before him. Never did an expression fall from him which shewed that he was a man of first impressions, or was ambitious of being distinguished for that smartness of prejudgment which foreruns proof. He left that paltry ambition to men of shallow understanding and flippant expression, who mistake a lively dulness for sagacity, and heartless conduct for energy of mind.

Baron BAYLEY was content to wait for the whole evidence before he formed his opinion upon any case. He knew it to be the duty of a Judge to protect innocence as much as to punish guilt; and he invariably acted upon the wise and humane maxim of the English law—of never presuming against innocence until guilt was proved.

In the science of pleading, if he did not excel all his Contemporaries on the Bench, he was certainly not surpassed by any. In the moral worth of his private character, and the unaffected energy of his religious feelings, he strongly resembles the great Sir Matthew HALE. We trust the day may be far distant when it will be necessary to write his epitaph; but, when it is written, it may with truth inform posterity that no individual has graced the Bench of this country who left behind him a purer example of an English Judge and a Christian gentleman.—*Morn. Herald, Monday, February 3, 1834.*

Mr. LLOYD gives notice of a Bill to amend the law of ARSON.

It is with great pleasure we observe that Mr. LLOYD, the Barrister, and Member for Stockport, has given notice of moving for leave to bring in a Bill to alter and amend the law of Arson, not with the view of throwing the net of our penal law more widely over human life than it is already spread, but for the purpose of *proportioning* the punishment to the offence, so that the *inferior degrees* of guilt shall no longer be confounded with the *highest*.

The CODE NAPOLEON reserves the penalty of death only for those cases of arson, in which, *life* is either *destroyed* or *necessarily endangered*, by maliciously setting fire to inhabited houses, &c. For all offences by wilful burning, under the highest, there is a scale of punishments adapted to the degrees of guilt. That this is more rational and humane legislation than what obtains in our own "reformed" code, as it was called some years ago, few will have the hardihood

to deny: that it is also *more effective*, is testified by experience. In France rick-burning is a crime very little known; nor is that in consequence of examples of blood. The mysterious fires which happened in Normandy, just before the French Revolution, led to no such examples, for the authors were never discovered; and, indeed, the incendiarism was popularly ascribed to the Government itself. In England the numerous executions which have taken place during the few years of the Whig Administration have proved the *severity* with which the law is carried into effect, but *not its efficacy*. The crime rather increases than diminishes, and the sword of angry law cuts down victim after victim, while humanity laments over so much unavailing bloodshed.

The truth is, that, although many suffer under the present state of the law, still more escape without any punishment, as the large proportion of *acquittals* shew. As long as the one indiscriminate punishment of death—the punishment of the murderer—is applicable to every degree of arson, so long will justice be defeated by the natural feeling of Jurors counteracting the law, and throwing complete impunity over the offender in a great number of instances. If the law were more consonant with reason and morality and sound principles of jurisprudence, by adapting the gradations of punishment to the degrees of guilt, it would be more practicable, and consequently *more effective*. In the minor cases of incendiarism, in all cases where life is not lost or endangered by the act of wilful burning, the number of *convictions* would bear a much greater proportion than they now do to the number of *prosecutions*.*

In the present enlightened age the people have advanced beyond the Government and the Legislature in their per-

* There being only 78 convicted out of 277 committed on charge of arson, for three years ending with 1833. (*Parl. Returns*.) This is only 28 per cent., whereas upon *non-capital* indictments in general the convictions average about 72 or 73 per cent.—ED.

ception of the criminal errors of that sort of penal law which, familiarizing the mind to cruel examples, neglects the proportions of guilt in the application of punishment, and disregards all moral means for extirpating the causes of crime, and effecting the reformation of the offender.—*Morning Herald, Monday, March 17, 1834.*

Case of Mannes Swiney, sentenced to death for Highway Robbery in Scotland.

A man named *Mannes Swiney* has been sentenced to be executed at Greenlaw, in Scotland, on the 2d of April (Wednesday next), to whose case we think it right to call the particular attention of Government and the public.

The prisoner was tried along with two others, who are to be transported for life, on the capital charge of having assaulted a person named *John M'Fee* on the night of the 24th of September last, and taking from his person fifteen shillings on the public highway. *Mannes Swiney* knocked the prosecutor down with the blow of a stick, and struck him again while on the ground; he was nearly in a state of insensibility when he felt some person rifling his pockets. This is supposed to be a man named *M'Bride*, who has absconded; the two other prisoners, *John Gollochar* and *Patrick Swiney*, stood by while the assault and robbery were committed. The Jury who found *Mannes Swiney* guilty of the capital charge, accompanied their verdict with a *recommendation to mercy*, on the ground that *the life of the person robbed had not been in danger*. The presiding Judges, Lords MEADOWBANK and MACKENZIE, disregarded the recommendation of the Jury, and the prisoner must die upon the scaffold on Wednesday, unless the Crown interpose its saving prerogative of mercy between the criminal and the ruthless sentence of the law.

A petition to the KING has been forwarded to the Home Secretary from Edinburgh, praying that the life of the

culprit may be spared. The petition is signed by such respectable names as those of Dr. GREVILLE, the Honourable H. D. ERSKINE, John CAMPBELL, Esq., Dr. GARDNER, Dr. GILLIES, C. M. CHRISTIE, Esq., of Durie, &c. One passage of the petition refers to the recommendation of the Jury in the following words:—"That this recommendation of the Jury, which is based on the principle that for a mere spoliation of property, unattended by personal danger, capital punishment is not the proper remedy, has been distinctly recognized by the feelings of the country." The recommendation of a Jury ought never to be disregarded, for it is the solemn opinion of the twelve men who have heard and have paid attention to all the merits of the case, and who, while they pronounce the accused to be guilty of the crime laid to his charge, are equally convinced that it was committed under extenuating circumstances, which it is both reasonable and politic should have an effect in mitigating the extreme severity of the law. The prisoner had it in his power to take the life of the prosecutor. The Jury say he did not even place it in danger. The law should not be so administered as to make it expedient for the offender "to commit a greater crime in order to prevent the detection of a less."

The prayer of the petition was in the following words:—

'Your petitioners trust that Your MAJESTY will deem it consistent with your duty to extend your Royal clemency to a poor unfortunate youth, whose general habits of temper and conduct, as far as can be relied on from the observation of those who have had constant and intimate intercourse with him since his conviction, are quite opposed to any thing like hardened profligacy, or strong propensity to outrage or crime.'

From the foregoing passage it appears that *Mann* was not previously addicted to the crime for which he has been ordered to suffer. Indeed a letter which we have received informs us that the prisoner had been a shearer at Whittingham, and for *seven successive years*, during which he worked at that occupation, had borne a good

character; but on crossing the border, the cheapness of whiskey tempted him into inebriation for two days, on the latter of which the crime took place for which his life is now forfeited to the law—unless the Royal prerogative, choosing mercy rather than sacrifice, prevent the exaction of this extreme penalty.

It is right it should also be known that the prisoner being very poor, had no agent, and the papers for his defence were drawn up without legal assistance, and put into his Counsel's hands while in Court, consequently without the necessary information which a professional agent would have prepared.

The prisoner, we understand, declares that he had no intention of making any attack upon the prosecutor when he set out—that he had no stick with him—that one of his companions, *M'Bride*, incited him to the assault, by stating that *M'Fee* had taken from him two shirts, and gave him the stick to strike *M'Fee*—that prisoner was under the influence of liquor, and did not know of *M'Bride's* intention to rob; nor did he ever see the money—that *M'Bride* did not arrive at Stew, the next town, until after the other prisoners, so that it is probable he staid behind to take the money. If the prisoner had had the assistance of a professional agent, he might have been able to shew that the circumstances were inconsistent with the notion of a previous conspiracy to rob—that he had no arms, nor even the stick, until the moment before the act, and that he had previously borne a good character.*

The fact is, that crimes of violence are extremely rare in Scotland, and have been repressed without much recourse being had to those spectacles of the gallows which, more

* "There was not a shadow of proof of any design to rob on the part of *Sweeney*, whatever there might be on the part of *M'Bride*." —*Edinburgh Observer*.—(See post. p. 199, et seq.) Farther particulars will be found on reference to the file of the *Morning Herald*: vide April 7, 1834.

frequently brutalize the heart than improve it. Formerly in England, when all, or nearly all, cases of conviction for highway robbery were followed by the inexorable infliction of the punishment of death, that crime was far more frequent, and was usually accompanied by more circumstances of cruelty, than since public opinion has caused the infusion of a comparative degree of lenity into the practical application of the law. But this lenity has not yet been carried far enough, from a proneness in Governments to make the laws rather feared than loved, as if they only felt their power by extirpating, and not by reforming guilty men.

Those persons—happily they are continually becoming fewer—who have a depraved appetite for punishments of blood, are apt to represent every effort to save the life of a criminal as being an effort in favour of the impunity of crime. It is the very reverse. Every instance of capital punishment, inflicted either for minor offences, or for greater crimes committed under extenuating circumstances, leads to the *impunity of many criminals*, because it disposes Juries to *acquit* where they think death to be too severe a punishment for the offence. We, by rendering the law more moderate, and its application more merciful, would render it *more effective* than it now is for the protection of property and life; excessive severity defeats the object of penal justice, by causing the public feeling to sympathize with the offender, and to entertain a deep abhorrence for the disproportionate severity of the law, which makes justice take too much the appearance of vengeance. About the middle of the last century highway robbery was one of the crimes to which mercy was very rarely extended; what was the consequence? Mr. WOOLRYCH, in his admirable “History of Capital Punishments,” tells us; he says—

‘ In 1751, it was acknowledged that travelling on the highways was very hazardous, and that it was almost unsafe to walk the streets, and, even at that day, people were not wanting who said that it was “surely a vain attempt to put a stop to such crimes by the halter,”

‘and, arguing with much sense, they admitted their ignorance of the true cause of the distemper :—think of our persevering obstinacy in 1832.’

We argue not for mercy to the prisoner, further than the saving of life on the grounds which we have already stated. The shedding his blood can be productive of no possible good ; it may do harm ; at all events it is a case in which, if Government proceed to exact the last penalty, it must do so without the concurrence or sanction of public opinion.—*Morning Herald, Monday, March 31, 1834.*

The case of Mannes Swiney continued.

Our readers will find in another column a statement of the case of *Mannes Swiney*, the unfortunate sheep-shearer, who was lately convicted of highway robbery in Scotland, and executed at Greenlaw. The statement is sufficiently explanatory of the circumstances of the case to convince us that, if His Majesty’s Ministers had, in compliance with the prayer of a most respectably-signed petition from Edinburgh for a mitigation of the sentence, advised the Crown to exercise its clemency in this case, they would not have been chargeable with an abuse of the regal prerogative of mercy.

It affords matter for melancholy reflection to observe with what tenacity our Whig Ministers *cling to punishments of blood*,* notwithstanding their proved inefficacy, and in direct

* The putting this man TO DEATH under all the circumstances of the case, and more especially as it was his first offence—in Scotland too, where the erection of the scaffold on such an occasion was unparalleled in later times—is only to be accounted for by a predetermination—which in England had been acted on in other cases—that the following declaration, subsequently made by Lord BROUGHAM in Parliament, will explain :—

‘The LORD CHANCELLOR said he differed entirely from the doctrine laid down by his Noble Friend (Lord Suffield). Though he was not a Secretary of State, nor likely to be a Secretary of State, yet, as the responsible Adviser of the Crown in the exer-

and violent contradiction to the enlightened sentiments which they used to express upon this subject when out of office. *Such instances of just opinions abjured, and principles sacrificed, to suit temporary purposes of political expediency, are calculated to give society a very poor opinion of the morality of public men in the nineteenth century.*

Not only was the enlightened public opinion of Scotland against the infliction of the extreme penalty of the law in this case, but there was also *the unanimous recommendation to mercy of the Jury* who tried the prisoners, and who, with

'cise or the withholding the prerogative of mercy with respect to cases that came before His Majesty, he so entirely differed from his Noble Friend, that *so long as the law continued unaltered, he should, where it was necessary, call for the execution of the sentence, notwithstanding he might agree afterward in the propriety of having that very law repealed.*'—*Times*, July 19, 1834.

During the four years he continued Chancellor, Lord BROUGHAM had had numerous, and various opportunities of giving *practical effect* to his views upon the question, in the instances of persons ordered for execution in or near London—(one for larceny above £5 in a dwelling—another for sheep-stealing—another for letter-stealing—another for extorting money under a threat—another for breaking a dwelling-house in the absence of its occupants and larceny therein—others for machine-breaking, &c.)—and it seems only proper, however painful to our readers, that sentiments such as his Lordship's, and at last so candidly avowed as they were in the speech above given, should stand on record in a work expressly devoted to the subject.—What posterity may say of them is quite another matter. For "particular cases," see *ante*, p. 59, and Vol. i. pp. 81–93, 101, 112, 115–118, 125, 145, 147, 152–162, 214–217, 258, 296–301, and 274. See also *Edinburgh Review*, January 1831, p. 545, for some remarks attributed to Lord BROUGHAM's peers. They relate to the case of the machine-breakers then about to be tried *capitally* under the Special Commissions in the agricultural districts, respecting whom his Lordship, after a fortnight's occupation of the Woolsack, uttered those ominous words given in our First Volume, (p. 81):—"Within a few days from the time I am now addressing your Lordships, the sword of Justice shall be unsheathed to smite, &c."

May we add, that, according to the broad principle laid down by Lord BROUGHAM in the declaration we first quoted, Government would

the same solemnity that they pronounced their verdict, declared that it was not a case that justified the sacrifice of life. On this point we cannot avoid quoting the strong and sensible remarks of the *Edinburgh Observer* :—

‘ It has been proved,’ says that Journal, ‘ in the present instance, that the recommendation of a Jury to mercy is of no avail if opposed to the opinion of the Judge, and, therefore, it is incumbent on that public, whose representatives Juries must be considered, to vindicate that dictate of mercy which has been found at once conducive to public safety and moral improvement.’

Such instances will render it necessary to have a law to make the *recommendation to mercy* by a Jury as obligatory as their verdict.—*Morning Herald, Monday, April 7, 1834.*

Case of the Dorchester Unionists.

Deeply do we regret the spirit of combination which exists at the present day among the working classes, and which has been so extensively embodied in what are called “Trades’ Unions.” All such combinations are productive of mischief to the interests of trade and of society at large,

be justified in putting the most atrocious of the laws of blood in execution, if they still remained on the Statute-book—such, for example, as the laws that inflicted DEATH for cutting down a cherry-tree in an orchard, or damaging the posts or rails of a turnpike-gate!

With regard to Lord BROUGHAM’s “agreeing afterward in the propriety of having that law repealed,” under which the exterminating punishment is inflicted, it should be stated that about three months subsequent to the execution of this young man, *Swiney*, the House of Commons, as will hereafter appear, passed a Bill to repeal the capital penalty. In the Lords the Bill might also have been passed, had it not been postponed upon Lord BROUGHAM pledging himself to bring forward early in the next session of Parliament (1835) “a general measure”—a pledge, however, that was not redeemed. Thus, while his Lordship is the apologist of executions because they are inflicted under the existing law, he took care, as far as he had the power, that the existing law should *not be repealed*!—(See *post*, Note, pp. 227, 237, and *ante* Vol. i. p. 168.)—ED.

and seldom, indeed, do they work any thing but evil to the combinatorers themselves. We cannot, however, shut our eyes to the fact that the present almost universal spirit of confederacy which exists among workmen, is but the reaction of labour against the cupidity of capital. The modern race of political economists, who regard the great mass of mankind as mere machines to produce wealth for a monopolizing few, have set up the great idol, Mammon, under the more philosophic name of "Capital," as the god of all human adoration. In all their publications, from the ponderous "Cyclopædia" to the "Penny Magazine," they boast eternally of what capital can effect by human and material machinery in the accumulation of wealth, without ever thinking it worth their while to shew how the mass of mankind are benefited by so much wealth being gathered into the coffers of a few.

For our own part, we are so far hardened in our philosophical heresy as to avow the opinion that it is the distribution of riches, not their accumulation, that benefits society, and makes a nation rich. The despotism of *unlimited* monarchy is not so bad as the despotism of capital; the former is chiefly felt by the higher classes, and the petty tyrants that surround the Throne; but the latter oppresses the great mass of society, and "grinds the faces of the poor." It is a mean, vulgar, sordid tyranny—that, to cheapen its manufactures for the market, would reduce men to the state of the cattle of the field, and accept children of tender age in sacrifice, as this Christian country has but too long and too recently witnessed, with the insatiable voracity of Moloch.

Still, Trades' Unions, though opposing a vicious system of monopoly and accumulation, are themselves bad things; under the notion of extending protection to workmen against the cupidity of capitalists, they exercise a tyranny of their own. They rely on the intimidation and terror which united numbers moving towards one object in a menacing

manner can inspire, rather than on the power of reason, and the efficacy of moral force. They are also bodies so organized as to be easily susceptible of those impulses which may hurry them into actual violence, although no violence may have been originally premeditated.

Government, we are told, is resolved to crush these Unions; and the sentence passed upon the Unionists convicted at Dorchester of administering unlawful oaths is a demonstration to that effect—no doubt, more sincere than some recent political demonstrations—but will it be as effective as it is sincere? We believe not, and we will give our reasons.

In the first place, a Government that encouraged political unions for their own party purposes, and appealed to the congregated numbers of those menacing Unionists as an argument for the intimidation of their political adversaries, unsheathes with a peculiarly ill grace the sword of stern Justice to punish Trade Unionists. Again, if the Government were pure enough to come into Court against them with clean hands, it is not by *straining the law* to get them within its net, or by punishments of *excessive severity*, that it can attain its object. As to the straining of the law, with all due deference to judicial authorities, and notwithstanding the *dictum* of Mr. Justice LAWRENCE, in the case of the *King v. Marks and others*, we cannot resign the opinion that the Act of the 37th Geo. III., cap. 123, passed at a time of great *political* excitement in England, was intended by the Legislature to apply only to oaths administered for *seditious* purposes; more especially as the preamble of the Act expressly declares the mischief to be remedied, was the administration of seditious oaths. It says—

‘Whereas divers wicked and evil-disposed persons have, of late, attempted to seduce persons serving in His MAJESTY’S forces by sea and land, and others of His MAJESTY’S subjects, from their duty and allegiance to His MAJESTY, and to incite them to acts of *mutiny* and *sedition*; and have endeavoured to give effect to their wicked and

‘traitorous proceedings by imposing upon the persons whom they have endeavoured to seduce, the pretended obligation of oaths unlawfully administered.’

Here nothing but the administration of oaths to *promote seditious purposes* is contemplated or glanced at, and in the enacting clauses we think it would be difficult to shew satisfactorily that the remedy has been extended to a mischief so much more extensive than that mentioned in the preamble as to include the oaths administered by members of Trades’ Unions.

But supposing the men convicted at Dorchester were clearly guilty of a violation of this law, is the severe punishment inflicted on them either just or politic? It is, in our opinion, *not just*, because we think those men erred in ignorance, and a law so little known became a snare to their feet. Now though the maxim is *ignorantia legis neminem excusat*, yet it is only just and reasonable that ignorance of the law should be taken into the account as an *extenuating circumstance*. Again, the punishment is *not politic*, because it is calculated to excite the public sympathy for the offenders. The offence is obscured by the too severe character of the penalty exacted, and all the benefit, all the moral influence of the example—is lost.

Public opinion has spoken out so strongly on this subject, through the medium of the Press, that Ministers now seem to shrink from the responsibility of refusing all mitigation of so disproportionately severe a sentence, and they throw the blame on another quarter. The *Guardian* says—

‘It appears that the poor misguided men of Dorchester are to be really transported. The thing is so odious, so universally decried throughout the kingdom, that the Ministers have endeavoured to escape from the obloquy by throwing it on their Royal Master. Can any thing be more cowardly or more disgraceful? They, forsooth, wish the sentence commuted—“But,” say they, “THE KING will not consent.” *It is not the first time that they have acted thus.*’

We recollect when the execution of a man named *Druitt*,

about two years ago, for a crime no longer punishable with death, excited the astonishment of all London, *the blame was thrown the next day by a Ministerial Paper upon THE KING.** But the maxim of the Constitution is that *THE KING* acts only upon the advice of his responsible Ministers.† We believe the imputation thrown upon *HIS MAJESTY* to be in both cases *utterly groundless.‡* If *WILLIAM THE FOURTH* does not exercise the Royal prerogative of mercy in any case in which it ought to be exercised, it is not from want of the principle of clemency in himself, but—because he is constrained rather to suppress his own kindly feelings than to act against the opinion of his *MINISTERIAL ADVISERS.§*
—*Morning Herald, Saturday, April 5, 1834.*

Case of Mr. Maxwell, capitally convicted at Limerick, under Lord LANSDOWNE'S Act, and commutation of his sentence.

It is not often that we can assent to the opinions which the *Globe* expresses on questions of criminal jurisprudence. They in general savour too much of the principles of that school of legislation which clothes Justice with the attributes of Revenge to suit our taste. Such opinions are behind the age in which we live. The day of cruel and exterminating punishments is drawing towards a close, notwithstanding the efforts of some Statesmen, who formerly advocated better principles, to preserve as many fragments as they can of a barbarous system. But the spirit of Christian intelligence—an irresistible power—the source of all true pre-eminence in civilization—is moving steadily on to the enlightened reformation of those laws which affect the morals of society. Nor will it desist until the just ascendancy of moral power over brute force be vindicated, and Vengeance be banished from the sanctuary of Justice.

* *Ante*, Vol. i. p. 301.

† *Ante*, Vol. i. p. 301.

‡ See Article (*post*,) extracted from the *Morning Herald* of November 24, 1835, in proof of the clemency of *HIS MAJESTY'S* disposition.—ED.

§ See Note, *ante*, p. 199.

But the *Globe* has, in a particular case, become an apologist of an act of mercy on the part of the Executive. We allude to the case of *Mr. Maxwell*, who was lately sentenced to be hanged at Limerick, for a conviction under the Statute which makes it a capital offence to assault and wound any person, with an intent to murder or do some grievous bodily harm. We believe our Contemporary describes accurately the circumstances under which the offence was committed, and we give the statement in his own words:—

‘ On the trial of *Maxwell*, at Limerick, it appeared that he and a relation named *Holmes* had long been in dispute about the possession of certain family property; that they had been accustomed to go armed, and attended by large bands of armed followers, to take and retake possession of the estate in question.

‘ These attacks had been for some time carried on with alternate success; forcible possession was taken by one party, and equally forcible dispossession by the other quickly followed. It appeared that on one of these occasions, which may be described as so many sieges or battles, *Maxwell* shot at *Holmes*.

‘ At the last Limerick Assizes *Holmes* and *Maxwell* were both tried for mutual assaults committed in the petty warfare which we have described. Both were found guilty.

‘ *Holmes* was sentenced to only nine months’ imprisonment, while *Maxwell* was left for execution.

‘ It is impossible that the LORD LIEUTENANT could have been insensible to the high degree of guilt which attached to *Maxwell*’s conduct. But the general criminality of the respective parties was equal.

‘ The punishments were most obviously disproportionate—the one much too lenient, the other greatly too severe. As it was impossible for the Executive Government to increase the former after sentence had been passed, an equal administration of justice could only be made by the diminution of the latter.’

Now we quite agree with our Contemporary in his conclusion that the punishments were most obviously disproportionate—that the one was much too lenient, and the other greatly too severe; we also concur with the opinion that as it was impossible for the Executive Government to increase

the former after sentence passed, an equal administration of justice could only be made by the diminution of the latter. For promptly rectifying the balance of justice so far we give the LORD LIEUTENANT of Ireland credit. It would have been monstrous, indeed, if one of the delinquents had perished on the scaffold, while his rival in guilt only suffered a short privation of liberty.

Under these circumstances, we cannot but express a most unqualified reprobation of the statement attributed to Colonel EVANS at the Trades' Union, on Friday night, which we also extract from the columns of our Contemporary :—

‘ From his description it would appear that *Maxwell* had *actually* committed a deliberate murder to gratify personal revenge, and that, nevertheless, the LORD LIEUTENANT had reversed the sentence of death passed upon him, and substituted a very short period of imprisonment, *because he was a gentleman*. The inference attempted or professed to be drawn from a comparison of this case with that of the Dorchester Unionists was, that no mitigation of the punishment of the latter was thought necessary, *because they were poor men*.’

To stimulate the passions of the working classes by statements of such a nature is not exactly the most respectable sort of work that a patriot can perform, and we would fain hope that Colonel EVANS's sentiments have been misrepresented. The LORD LIEUTENANT of Ireland would, indeed, have been culpably careless of the equal administration of justice if he had not mitigated the sentence of death passed on *Mr. Maxwell*. But the eighteen months' imprisonment into which the sentence of death has been commuted is too slight for the offence, though in reference to the judgment of nine months' imprisonment passed upon *Mr. Holmes*, it is enough. The punishment of the latter could certainly not be increased after sentence, otherwise we would rather have seen both subjected to more severe correction for encouraging and inciting persons, in inferior condition of life to themselves, to systematic and desperate violation of

the law. The lower class of the Irish are, unfortunately, but too apt to act upon the impulse of their passions, and undoubtedly, severe chastisement ought to be inflicted upon "gentlemen" who set them examples of lawless ferocity.

But if Government, under all the circumstances, has rightly commuted *Mr. Maxwell's* capital sentence to eighteen months' imprisonment, they must do egregious wrong, and make the distribution of punishments exorbitantly unequal, if they enforce the sentence of *seven years' transportation* against the Dorchester Unionists, who have been convicted of no other offence than what might be charged upon Freemasons or Orangemen. Let any reasonable man compare, either in social or moral guilt, the crimes of *Messrs. Holmes* and *Maxwell* with those of the Dorchester Unionists, and we venture to say he will not be able to reconcile the disproportion of punishment to any settled notions of reason or justice. Let Government be wise before it be too late—obstinacy in error is not dignity.—*Morn. Herald, Tuesday, April 22, 1834.*

Power of THE PRESS abused, when attempts are made to inflame the minds of JURORS against a prisoner before trial.

It is necessary that the administration of justice should be not only dispassionate and impartial, but above suspicion. Whatever may be thought of the excessive severity of our criminal laws, which are the most severe in Europe, the subject has, at all events, a right to a fair and unprejudiced trial. We consider it, therefore, one of the worst abuses of the power of the PRESS when it lends itself to the unjustifiable object of poisoning the fountain of justice in its source, to effect the destruction of an individual accused of any serious crime, who is about to take his trial at the bar of his country. We have been led to make these observations from seeing a paragraph in a Provincial Paper, which, if it be not deliberately intended to prejudice the case of an individual whose

life is at stake, has certainly no meaning whatever. The following is a copy of the paragraph in question :—

‘ A young man named *Richard Wells*, was on Saturday committed to Fisherton gaol, charged with setting fire to the premises of Mr. Richard Hayward, at Chirton; and if the charge can be substantiated, we should say, considering the misery and distress he has occasioned, that he richly deserves to expiate the crime on the scaffold. It appears that on the day previous to the fire, he was heard to express great discontent at Mr. Hayward’s deducting some of his “allowance money” for neglect of work; that on the evening of the fire he was playing at dominos at a beer-house in the village; that about ten o’clock, having previously lighted his pipe with something he had in his pocket, notwithstanding there was a lighted candle on the table, he left his companions, and remained out for three-quarters of an hour; and that within a quarter of an hour after his return, when his companions were first alarmed by the cries of “fire,” the greater part of the property enumerated in our paper of the 24th ult. was consumed, and which must have been on fire previous to his return. It also appears, that whilst others were using their utmost exertions to extinguish the flames, he refused to lend assistance unless the sum he was to be paid for his trouble, was first named.’

The above was evidently written for the purpose of exciting the passions of that class of persons who will have to try this case of circumstantial evidence, so that they may go into the jury-box having made up their minds to a verdict of *guilty* before they even hear the *evidence*.

If it were the case of a rich man charged with an atrocious crime, such an attempt to supersede the necessity of a calm and unbiassed investigation of the charge by a Jury sworn to be impartial and indifferent between the Crown and the accused, would very deservedly raise a great outcry. But, by the Constitution of England, all men are equal in the eye of the law, and the peasant has as sacred a right to a fair trial at the hands of his Peers as the proudest subject in the realm. Let a great man be accused of *high treason*—a much greater crime than *rick-burning*—who would dare to publish such an anticipation of his doom?

Nor is there a circumstance stated by the writer which is not reconcileable with the innocence of the accused. We presume not to judge the case; it is not for us to decide upon the guilt or innocence of the party who now awaits a trial for his life—we only desire to prevent the monstrous injustice that would be done if accusation before trial were to be commented upon as proved guilt.*

When we see such attempts to hunt down victims without any regard to even the forms of justice, we are the more pleased that Mr. LLOYD's motion is about to bring the law of arson under the notice and revision of the Legislature.—*Morning Herald, Wednesday, May 21, 1834.*

Sir John CAMPBELL's *characteristic description of the Criminal Law to his Constituents in Edinburgh.*

We are not sorry to see Sir John CAMPBELL in Parliament again, not because he is a Whig, and the Attorney-General of the Whig Government, but because he has the means and the capacity to do good, if he only choose to exercise them, and especially because he stands pledged to the abolition of *Imprisonment for Debt*,† and other reforms in our legal institutions. Among other reforms, that of the criminal jurisprudence of the country is one to which, as the public are aware, we have devoted a good deal of attention, not altogether without success. A large portion of the criminal code is now much more humane and efficient, and, in every respect, much more worthy of an enlightened and Christian community than when we first took the subject in hand.

* *Richard Wells*, whose life had been thus endangered, was soon afterward (July 18, 1834,) tried at Salisbury, before Lord Chief Justice DENMAN, and acquitted.—ED.

† We write on the 5th December, 1836, and think it may be said that as yet nothing has been *seriously* attempted upon the question of Imprisonment for Debt.—ED.

In this branch of the law we must admit that Sir John CAMPBELL has been rather inclined towards reform than against it; but this sort of praise implies, as indeed the truth is, that he has not given the cause that bold and decided support which we have no doubt he would have done if the Whig Ministers, faithful to their former principles, had been more earnest and sincere than they have shewn themselves in rendering the criminal law of England congenial with the advanced civilization of the country.

When the Hon. David ERSKINE, preparatory to the Edinburgh election, put a question to Sir John CAMPBELL, with a view of ascertaining his opinion upon capital punishments, the answer of the ATTORNEY-GENERAL is reported to have been—

“ I will make my reply with all liberty. The old code of England “ was the *most bloody and barbarous that was ever heard of in a civil-
“ ised country.* I believe I may boast of having softened its ferocity.
“ I supported in Parliament several Bills for lessening the number of
“ capital punishments. *Forgery* ceased to be a capital crime; stealing
“ property to the value of £5 in a dwelling-house—a sheep—an ox—a
“ horse from the common—which previously were punished with death,
“ were struck out of the capital portion of the Statute-book by Bills
“ which I warmly and actively supported. But if the question is put,
“ should all capital punishment be abrogated, I say No ! ”

Another report states that he said *death*, as a punishment, was indispensable for the crime of taking life, and referred to Holy Writ. It is not necessary to enter into that question now, though if Sir John reads his Bible as attentively as he does the Term Reports, he will find that the *first* murderer was not punished with death, but made a more terrible, and a living example. We are content if Sir John will undertake to do away with the capital penalty for every crime but murder. Sure we are that if such a mitigation of law take place, even murder will be less frequent than it is; because laws which take life for inferior offences, teach revenge and cruelty to the people, and, by divesting life of its sacredness,

make man more prone than he would be under milder laws, to shed the blood of man.

The Divine Ordinance against murder, Sir John CAMPBELL knows, or ought to know, applies as well to *Legislatures* as to *individuals*. Of little avail would it be to denounce the wanton shedding of blood by an individual, if collective bodies of men could justify the intemperate or unnecessary destruction of human life by pleading the arbitrary power of legislation. That power may protect them from *legal punishment*, but not from *moral guilt*. We trust, therefore, that Sir John CAMPBELL will do every thing in his power to relieve the Legislature of England from the imputation of being regardless of the *eternal canon against murder*, in framing laws to punish crime. The only atonement that can now be made for the many murders that have been committed under the operation of the "bloody and barbarous code" of which he has spoken, is the immediate and extensive purification of our criminal law from the stain of cruelty and revenge.

Sir John CAMPBELL takes credit to himself for having supported those Bills of Mr. EWART and others, by which several capital punishments have been struck out of the Statute-book, but he has never yet brought in a single Bill himself to promote this work of reform in our criminal jurisprudence. The present Lord DENMAN has the merit of having, when Attorney-General, brought in the Bill to repeal the penalty of death for forgery, which notwithstanding the prejudice attempted to be excited at the Mansion House last year in favour of a return to the severity of the repealed law, is operating to the protection, and not to the injury, of commercial credit; and it does so by removing a great obstacle to prosecution, and by rendering the *conviction* of the forger more easy, and his *punishment more certain*.

We wish that Sir John CAMPBELL would as honourably distinguish himself in this field of legal reform as Lord DENMAN did—by originating some great measure of judicious

amelioration, instead of contenting himself with giving a casual support to others. In the meantime, however, we cannot but expect his support for Mr. LLOYD's Bill to reform the law of *arson*, by distinguishing the cases where *life* is lost, or necessarily endangered, from the *inferior grades* of the crime, which ought to be visited by a punishment less revolting to human feelings than death, and, therefore, more likely to be *effective* in protecting property against a species of outrage which, *under the capital law*, has fearfully increased, thereby proving that it is as feeble as it is vindictive. After what passed on the hustings at Edinburgh, Sir John, we think, must be of opinion that he would greatly disappoint his constituents if he did not give his best support to this Bill of Mr. LLOYD, to take away from the Statute-book another remnant of what he (Sir John) designated as a "bloody and barbarous code."

Nor can he consistently refuse to raise his voice in favour of Mr. LENNARD's Bill relative to *highway robbery*, in which a similar principle to that of Mr. LLOYD's is recognised, and which may have the effect of preventing robbery being followed by murder, as is too often the case. There is also Mr. EWART's Bill to substitute a more certain and effective punishment than death for *stealing* money out of *letters*; for *returning from transportation*, and for certain cases of *burglary*. These Bills, as well as another for allowing Counsel to *address the Jury for the prisoner* in charges of felony, and to place the prosecutor and accused upon an equal footing, must, we are quite sure, meet with the countenance and support of the ATTORNEY-GENERAL,* unless he thinks that the air of St. Stephen's Chapel, swept and garnished as it has been by the spirit of reform, is less favourable to the growth of enlightened sentiments of legislation than

* Such of our readers as were then Constituents of Sir John CAMPBELL, by referring to the Notes, *ante*, pp. 60, 79, may be enabled to form their own opinion as to the course he took.—ED.

the atmosphere of "modern Athens" during the promising season of an election.—*Morning Herald, Thursday, June 5, 1834.*

Mr. EWART's Bill for allowing persons accused of Felony to make their full defence by Counsel.—Mr. POLLOCK's support of it.

At length we may congratulate the friends of impartial and enlightened justice that the disgraceful anomaly in the practice of our criminal law, which prevents a prisoner's Counsel from *addressing the Jury* in cases of felony, is about to share the fate of other legal errors which the advancing power of civilization has swept, or is sweeping, away in its irresistible course. The triumphant manner in which Mr. EWART's Bill, to remove this crying injustice from the judicial practice of our Courts, passed the Second Reading, seems to be conclusive of its success in the House of Commons.* Serjeant SPANKIE, the Learned Member for the Borough of Finsbury, was the only lawyer who ventured to oppose the Bill; and the names of GOULBURN and POULTER were conjoined with his in the *laudable* effort to preserve this systematic outrage upon reason and justice as part and parcel of the practice of our criminal judicature. We will leave the Learned Serjeant in the hands of the *Courier*,† that speaks of his conduct in the following terms:—

‘ Mr. Serjeant SPANKIE's opposition to the Bill surprised us. He
‘ is a Scotchman, and cannot be ignorant that the measure now to be
‘ introduced here has always worked well in Scotland, in which, of all
‘ countries in the world, a prisoner has the most perfectly fair trial.
‘ But Mr. Serjeant SPANKIE objects, that if Counsel be allowed to
‘ speak for a prisoner, a Court of Justice will be merely an arena for
‘ the display of talent, and the prisoner will be the sufferer. No such
‘ result has taken place from following in Scotland, North America,
‘ and France, the practice, now—we hope—to become the law of this

* See Note, *ante*, p. 78.

† We have elsewhere given some excellent remarks upon this subject from the *Courier*.—(*Ante*, p. 77.)—ED.

country, and experience, we submit, is a far safer guide than the opinion or dictate of any lawyer, however eminent. Mr. POLLOCK'S statements were unanswered and unanswerable, and ought to ensure the success of the Bill, which is more essential towards the security of personal liberty than any measure recently brought under the consideration of Parliament.'

The *Courier* says rightly that Mr. POLLOCK'S statements were unanswered and unanswerable.* His high character at the Bar, of which he is one of the most distinguished members—his great experience—his acute and reflecting turn of mind—and his known attachment to the institutions of his country, give additional weight to the arguments and facts which he adduced in support of Mr. EWART'S Bill. In answer to an observation made by Mr. POULTER, it was sarcastically observed by Mr. O'CONNELL, that—

'If some guilty persons escaped under the present system, a

* It reflects great honour on the public character of Mr. (now Sir Frederick) POLLOCK, and must afford him satisfaction in the retrospect, that upon accepting the office of ATTORNEY-GENERAL—which he soon after filled for a few months under Sir Robert PEEL'S Administration—he neither forgot nor abandoned his former views upon this subject. With a manly consistency too often wanting in official characters, he then, although *Law-Officer of the Crown*, came forward and supported those views, by stating facts in evidence before the Criminal Law Commissioners; and this is alike honourable to the Premier of that time, who had entertained unfavourable opinions in regard to the Prisoner's Counsel Bill.—(See *Parliamentary Paper* 1836, No. 343, pages 73, *et seq.*, for the valuable evidence given by *this* ATTORNEY-GENERAL.) It is thus upon record that Sir Frederick POLLOCK is not of that class of men alluded to so pointedly in the House of Commons in 1810, when the great Sir Samuel ROMILLY said, 'If I had listened to the dictates of prudence, if I had been alarmed by such prejudices, I could easily have discovered that the hope to amend the law is not the disposition most favourable to prement. I am not unacquainted with the best road to *Attorney-Generalships* and *Chancellorships*:—but, in the path which my *sense* of duty dictates to be right, I shall proceed; and from this no misunderstanding, no misrepresentation shall deter me.'—ED.

‘sufficient number of *innocent* persons were convicted to make the balance of Justice even—so that it might be said the system worked very well on the whole!’

The melancholy truth which gave the sting to this sarcasm, was evidenced by what Mr. POLLOCK stated of the condemnation of innocent persons coming within his own knowledge, *in consequence of the law preventing Counsel from addressing the Jury.*

Such facts, stated upon such authority, cannot be too widely circulated, to prove what dreadful errors are committed from the fallibility of human tribunals, and how necessary it is to be very sparing in the application of the punishment of *death*, if it be retained at all, or, at least, to afford human life every fair protection against the consequences of false accusation. Mr. POLLOCK put the question on its right principle when he said that—

‘If Counsel were allowed to speak on both sides, *more guilty* persons would be convicted, and *more innocent* persons would escape, because they would have better means of defending themselves.’ Then see his facts :—‘He recollected,’ he said, ‘when he was young at the Bar, being present at a trial in the country, in which a prisoner was charged with an offence which, of all others, required that the accused should have the assistance of Counsel. It was a trial for rape. The man was found guilty, and sentenced to *death*; but he felt so convinced of his innocence, that he intended the next day to have started for London, in order humbly to lay his opinion before the Secretary of State. The necessity of doing this was prevented by the Judge of Assize respiting the condemned, whose punishment was first commuted to transportation, then to two years’ imprisonment, and ultimately he was set at large. There was another case, at the trial of which he was also present, in which the accused was found guilty of murder, and *was EXECUTED in forty-eight hours.* He was satisfied that the man *WAS INNOCENT*, and that his *innocence would have been established had he been allowed to make a full defence.* He recollected, on another occasion, four men were tried before Mr. Baron WOOD, at Durham, for a capital offence. The Judge summed up, as regarded two of them, for an *acquittal*; but the Jury misunderstanding him, he supposed, found them *guilty.* He was

obliged to pronounce sentence of death upon them, but immediately respited them'—[some Judges would have left the law to take its course]—'and the witnesses who gave evidence against them, were afterwards convicted of perjury. The Jury found the other two also guilty; but one of them declared that *he alone was guilty*, and that *his companion was innocent*. In all these cases of innocence, he was satisfied that had Counsel been allowed to *address the Jury* for the prisoners, they would have been *acquitted*.'

It is fearful to contemplate the amount of ignominy and suffering which is inflicted on innocent persons by the anomalous state of the law, which prevents a prisoner tried for *his life* on a felonious charge, from making his *full defence* by Counsel, although in cases of treason and misdemeanour—the highest and the lowest classes of crime—he has that privilege, or rather, that obvious right of justice is not withheld from him.

The tragic anecdote told by Mr. O'CONNELL of the three brothers, condemned to death on perjured evidence for want of a full defence by Counsel, made a powerful impression on the House; nor can we omit to notice the very effective speech of Mr. HILL. Truly did he say that—

'The origin of our present practice is to be found in the same system which adjudicated men to death on paper depositions, without confronting the prisoner with the witnesses against him, and inflicted torture on the prisoner in order to extract from his own mouth evidence against him. Under such an iniquitous system was it that *Lord Essex* was sacrificed, and that great and illustrious man Sir *WALTER RALEIGH* was brow-beaten, insulted by a tyrannical *ATTORNEY-GENERAL*, and finally suffered on the block.'

There are some Magistrates who would practise similar tricks of cruel absurdity on the seat of justice at the present day if public opinion allowed them; and this scandalous abuse of authority to the oppression of the accused, they would call being "a terror to evil-doers." It is not long since an attempt was made in this great metropolis to revive the practice of applying mental torture to the accused, extort evidence from him—namely, interrogating him as

a witness, and imputing guilt to him if he did not choose to answer—a practice which, as we could shew, would inevitably lead to the foulest oppression, and which was most properly and most indignantly reprobated at the Old Bailey by the constitutional Judges of the land. (See *ante*, pp. 77-91, 173.)

Mr. HILL also alluded to the notorious and melancholy case of *Eliza Fenning*, which has consigned the memory of a former Recorder of London to a fame the reverse of enviable.

Mr. EWART deserves great credit for bringing in the Bill which elicited the important discussion of Wednesday night. It will be recollected that the late Mr. G. LAMB* moved for leave to bring in a similar Bill in 1826†—when the greatest Advocate of the English Bar—Sir JAMES SCARLETT—made a powerful speech in support of the motion, which was negatived, and never renewed by Mr. LAMB after the Whigs came into office. The House of Commons has now adopted the principle of the Bill; and when it becomes the law of the land, men will wonder how the barbarous practice

* It is only an act of justice to the memory of the late Mr. Richard MARTIN, of Galway, to state that he had previously submitted a similar proposition to the Legislature as to prisoners indicted *capitally*. See *Debates in Parliament*, February 21, and March 30, 1821.—Mr. LAMB's motion was first brought forward April 6, 1824. See *ante*, p. 72.—ED.

† By reference to the Debate (April 25, 1826), we find a powerfully argumentative Speech of Mr. Horace TWISS, which we much regret the want of room to here transcribe. The Hon. Member concluded by saying ‘he was glad the Right Hon. Secretary (Mr. PEEL) had dis- posed of the discreditable argument about the *consumption of time* by the addresses of Counsel. What! could the country find time enough to accuse the prisoner—time enough to convict him—time enough to inflict the *punishment of DEATH* upon him—and not find time to hear reasons for his acquittal?’—The motion was lost by a majority of 105, against 36. In the list of the minority we find the names of Mr. (now Lord) BROUGHAM, Mr. SCARLETT (now Lord ABINGER,) Mr. DENMAN, (now Chief Justice, K.B.,) Lord ALTHORP, (now Earl SPENCER,) and Mr. T. Spring RICE.—ED.

which it goes to reform, could have subsisted so long.—*Morning Herald, Saturday, June 7, 1834.*

Beneficial Effects of the Mitigation of the Law.—Mr. LENNARD'S Bill relative to Highway Robbery.

MR. LENNARD has a motion on the paper for this evening, for a Bill to repeal so much of two Acts of 7 & 8 Geo. IV., and 9 Geo. IV., as is contained in the following words:—

‘And be it enacted, that if any person shall rob any other person of any chattel, money, or valuable security, every such offender, duly convicted thereof, shall suffer DEATH as a felon.’

The utter inefficacy of all attempts to make the rights of property respected by fencing them round with laws of blood, has been so amply demonstrated by the irresistible evidence of experience, that if it were not for the prejudice which makes some minds cling to a bad habit, and the reluctance which others feel to relinquish a power over human life, which they have long enjoyed, the laws which sanction judicial homicide in this country for offences against property, would have been before this time universally exploded.

Persons who fall into the gross and barbarous error of considering justice strong in proportion as it is vindictive, are apt to represent the advocates for the amelioration of our penal code as being actuated by the inconsiderate feelings of an impracticable humanity, and they reiterate for ever, “Is public sympathy only to be given to criminals? Is property to be left unprotected?” To err on the side of mercy is a fault which has, at least, something redeeming about it; but to oppose both reason and experience in favour of a system of justice equally barbarous and ineffective, speaks as badly for the head as for the heart of the man whose logic is so ferocious and feeble. We put aside, at present, the question of the right of the Legislature to make what laws it pleases against human life—a right which the most enlightened writers on the subject have denied. Let us look to facts.

There was published not long since, in a Morning Paper, a Table compiled from Parliamentary Returns, which it may be well to bring under the notice of the public at the present time. We give it with the observations which our Contemporary appended to it:—

LONDON AND MIDDLESEX.

CRIMES.	1st Period, 1827-28-29.		2d Period, 1830-31-32.	
	<i>Executed.</i>	<i>Committed.</i>	<i>Executed.</i>	<i>Committed.</i>
Burglary and House-breaking	19	311	3	288
Coining	4	18	<i>None.</i>	12
Forgery	8	50	<i>None.</i>	61
Horse-stealing	4	58	<i>None.</i>	48
Stealing in a Dwelling-house	5	213	1	192
Sheep-stealing	2	22	1	17
Total	42	672	5	618

‘ Here are six offences for which, in the first three years, 42 persons were executed; in the latter only 5; and, together with the diminished frequency of executions, the number of commitments has fallen from 672 to 618, a diminution of 54. The only crime [the number of commitments for] which appears to have increased is Forgery, and the increase is confined to London and Middlesex; for we find, on referring to the criminal returns for England and Wales, [which include those for London and Middlesex,] that the number of commitments for this offence has fallen from 213 in the first three years, when 15 persons were executed, to 180 in the three following, when it ceased to be visited with the capital penalty.’—*Times*, March 15, 1834.

So far our Contemporary. Now we add, that by reference to the above Table, and to Parliamentary Returns, the following results will be ascertained as to the *proportion* between *commitments* and *convictions*. In the first period, when the offences were punished with *death*, the average convictions were only 57 out of every 100 commitments. In the second period when the offences ceased to be capital, the convictions increased to 62 out of every 100 commitments. The disproportion has been greater since, for subsequent Returns shew

that in the year 1833 the convictions had increased to 72 out of every 100 committals. This accounts for the gradual decrease of those crimes which were once capital, but are so no longer. Thus it is that the advocates for the rational amelioration of our penal laws "leave property *unprotected*!" Why, it was the cruel and barbarous mode of punishment by shedding human blood, that *took away* the proper protection of property, and excited more sympathy for the offender than respect for the law. The law could not be executed, because human conscience and feeling revolted against it. A comparatively small number of offenders felt the vengeance of the law, while the majority escaped, from the reluctance of injured persons to prosecute, or of Juries to convict.

It is as true as it is remarkable, that the number of committals for *forgery*, as Parliamentary Returns shew, in 1833 was precisely the same for England and Wales as in 1827, being 91 in both years.* But mark the difference as to the superior efficacy of the ameliorated compared with the sanguinary law. In 1827, out of 91 committals there were but 46 convictions—while in 1833, out of 91 committals there were 62 convictions. So that the convictions under the *non-capital*, were one-third more than the convictions under the *capital* law [out of the same number of committals].

How completely this refutes the extravagant assertion of the admirers of exterminating laws, that to repeal the punishment of death for forgery would ruin the commercial transactions of England! Let the same reasoning be applied to Mr. LENNARD'S Bill—it will hold equally good—the amelioration of the law will make the punishment more certain, and therefore more efficacious.

The triumph of criminal legislation is to *reform*, not to *exterminate* offenders. Man is so greatly the creature of

* But in 1827, while the punishment was *death*, many forgers or that reason escaped *without prosecution*. Not so in 1833.—ED.

circumstances, that the best can hardly resist the influence of bad example, and the reformation of the worst is never to be despaired of, under judicious moral government. We copy the following paragraph relative to this part of the subject from the *Bury Post* :—

‘AMERICAN PRISON DISCIPLINE.—The Governor of the Senate, in his message, states that the plan of penitentiary reform practised in the prison of *Pennsylvania*, called the Eastern Penitentiary, has had a most salutary effect. Out of fifty-two convicts discharged in the two years since its establishment, not one had been brought there a second time, and the earnings of the prisoners exceeded the expences.’

The North Americans have taken more trouble than any other people to devise, mature, and perfect a good reformatory penal system, and their labour has not been unrewarded.—*Morning Herald, Tuesday, May 13, 1834.*

MR. LENNARD'S and MR. LLOYD'S *Bills relative to Highway Robbery, and Arson.*

This evening Mr. LLOYD'S Bill and Mr. LENNARD'S to effect beneficial and important alterations in the criminal law stand for discussion in the House of Commons. The former, as our readers will recollect, goes to alter the law of *arson*, by making distinctions of punishment according to *degrees* of guilt, removing the capital penalty from all cases where life is not lost, or necessarily endangered. The other proposes to abolish the penalty of death for highway *robbery*, by which no doubt, a great many murders—that in consequence of the present state of the law, are committed to prevent the detection of the less crime—would be prevented.

The necessity of such a change in the law of *arson* as MR. LLOYD endeavours to effect we have repeatedly recommended, and enforced by arguments which we need not here repeat, and which have never yet been answered. Suffice it to say, that while crime *diminishes* in the cases wherein the capital punishment has been lately repealed, as Parliamentary Returns shew, the crime of *arson increases*, in spite of the numerous victims that are constantly immolated on the

altars of vindictive justice. But numerous as the human sacrifices are, under this law of blood, still more delinquents escape than are punished,* because a considerable portion of that class who act as Jurymen, have a natural abhorrence of punishing a person who sets fire to a stack of straw or hay in a field, as a murderer, and so acquit upon evidence which they would consider sufficient if the law were less vindictive, and the punishment more proportionate to the crime.

We hear that the ATTORNEY-GENERAL,† notwithstanding his denunciation at the Edinburgh hustings of “a bloody and barbarous code,” [p.211,] intends to give some opposition to those Bills, as well as to a clause in one of Mr. EWART’S, relative to burglary. If the Hon. and Learned Gentleman should propose, and be able to carry, any “amendments” calculated to neutralize the principle of effective amelioration contained in those Bills, we would advise the authors of them rather to throw them up, and leave all the odious responsibility upon Government, than be made the agents of an insincere and narrow-minded Administration to carry mutilated and inefficient measures. They will gain more credit from the country by so doing, as well as from their own consciences, than by earning that sort of reputation which follows the acts of those persons who meet the public demand for rational reform of our institutions by measures of mock improvement. — *Morning Herald, Wednesday, June 11, 1834.*

Committal of Mr. LENNARD’S and Mr. EWART’S Bills.—Lord SUFFIELD’S sentiments upon the reform of the Criminal Law, delivered in the House of Lords.

Mr. LENNARD’S Bill to mitigate the severity, and thereby

* See Parliamentary Returns, *ante*, Note, p. 194.

† Sir John CAMPBELL was at this time Attorney-General. See *ante*, pp. 60, 79, 105, and *post*, p. 227.

improve the efficacy of the law in cases of highway robbery, is to go into Committee to-day, and also Mr. EWART's Bill to allow Counsel to address the Jury for prisoners charged with felony, who ought not to be subjected to the loss of liberty or life without having an opportunity of making a *full defence*. It is so reasonable—so consistent with the unperverted notion of what is fair and just, that he whose character, personal freedom, or *very existence is at stake* in a Court of Justice, should not be compelled to defend himself with one hand tied, while both the hands of the prosecutor are free, that we only wonder how a contrary practice could have prevailed so long as it has done, in a country whose tribunals, ever since the suppression of the secret and arbitrary Court of Star Chamber, have been open to the observation of public opinion. But from what took place in the House of Commons when the principle of Mr. EWART's Bill was discussed, we hope that foul stain upon the justice of the country is about to be removed, and for ever.

As to Mr. LENNARD's Bill, let us bear in mind how ineffective the punishment has become for which that Hon. Member proposes to substitute one more rational, more proportionate to the offence, and therefore more efficient. It was justly observed by Chief Justice DENMAN, some time ago, on Circuit, in an address to the Grand Jury, that the changes in the criminal law, which united wisdom and mercy recommended, had removed a number of capital punishments, that were *less efficacious in repressing crime than in preventing prosecution*.

When Lord WHARNCLIFFE's motion relative to [what are called] Secondary Punishments was under consideration in the House of Lords, a short time since, some observations were made by another Noble Lord, to which at the present moment it may be useful to recall public attention. We refer to Lord SUFFIELD, who, as Chairman of Quarter-Sessions for the County of Norfolk, and a Member of the Committee

of the Prison-Discipline Society, as his Lordship was understood to say, claimed the attention of the House.

In speaking to the motion on Secondary Punishments Lord SUFFIELD remarked that it was one of great importance in many points of view, but more especially as it had been made a plea for the continuance of the capital penalties, in many cases where they might have been advantageously abolished, that our secondary punishments were so imperfect as to make but inadequate substitutes; that, whether this opinion were true or false, our sanguinary punishments had already been abolished for several offences; and he added, emphatically, that *at no distant period their Lordships might rest assured our criminal code must undergo a much more comprehensive amelioration.* The inefficacy of capital punishments to repress crime, the Noble Lord continued, had been discovered; experience had come to the aid of reason to improve our system of justice. There was a great and growing aversion to the judicial shedding of human blood. The increased civilization of the age and improved tone of public feeling rendered it *impossible* that the infliction of the punishment of death could be continued much longer, needless as it was for the security of the public. Upon these grounds it was incumbent on the Legislature no longer to delay providing some other more reasonable and efficacious mode of punishing offences.

His Lordship then proceeded to controvert some opinions of Lord WHARNCLIFFE respecting the effect of the recent mitigation of the criminal law, by adducing facts to which, upon some former occasions, we had adverted. He stated, among other things, that the well-known reluctance to prosecute while the penalty continued capital, had heretofore prevented the *commitment* of a large proportion of criminals, who *now no longer escaped* punishment on that account—a circumstance which in itself would account for a considerable increase of prosecutions, although the state of crime were to

remain the same, or even to diminish. In the next place, the *proportion convicted* had increased, as would appear on reference to the Parliamentary Returns, by which it would be found on calculation, that in every 100 persons *committed* for crimes *no longer capital*, the average number now *convicted* is 72—a proportion precisely the same as the convictions in the aggregate for offences [heretofore] *not capital*; while, upon the other hand, the average *convictions* were only 47 in each 100 *commitments* for the class of offences *remaining capital*; that is to say, only 47 instead of 72 are convicted—the remaining 25 escaping by verdicts of acquittal, produced by the barbarous severity of the law.

Lord SUFFIELD stated that those two circumstances of *diminished reluctance to prosecute* and *increased probability of conviction* had already begun to work their good effects, and would eventually make those good effects more apparent, on the principle that it is the *certainty* and not the *severity* of punishment that deters from crime. Even at present, by reference to Returns from the Home Office, it would be seen that in the three years ending with 1833, *prosecutions* for those offences still punished with DEATH had, in spite of the aversion to prosecute, *increased 44 per cent.*, as compared with the three years ending with 1829, while *prosecutions* for those offences which had lately ceased to be capital had, during the same period, increased *only two per cent.* Now, it was not a strained inference to say, that considering the diminished reluctance to prosecute in the latter class of offences, this state of things indicated a *decrease* of the actual perpetration of crime.

This clear and forcible statement of Lord SUFFIELD brings the question of the beneficial effects of mitigating the severity of our criminal laws to the test of common arithmetic. Let us apply this reasoning to Mr. LENNARD'S Bill, and we shall be convinced that it is not only safe, but advantageous to the public, that the proposed ame-

literation should be adopted.*—*Morning Herald, Thursday, July 3, 1834.*

MR. EWART'S *Bill for mitigating the law in cases of Letter-stealing and some other capital offences.*

MR. EWART'S Bill for altering and amending the law in cases of *letter-stealing—returning from transportation*—and in cases of *constructive burglary*,† stands for the Second reading this evening.

This Bill, it will be seen, is intended to make further innovation upon that system of vindictive justice which had

* In leaving, for the present, the subject of Mr. LENNARD'S Bill, we must not omit to state that it passed the House of Commons, without even a division in any of its stages. The means employed by Lord Chancellor BROUGHAM to prevent its being sanctioned by the House of Lords have been already adverted to (Note, ante, p. 201). It was on Tuesday, 22d July, 1834, that his Lordship having for this purpose informed the House that a general and systematic Report would be prepared by the Criminal Law Commissioners, (see p. 235,) added, 'I pledge myself, that as soon as this Report shall have been duly considered,—I pledge myself to bring in a general measure, without waiting for the other House of Parliament, and at such a period of the next session as will leave your Lordships plenty of time for its due consideration.' (These were his Lordship's words).

The "next session," 1835, arrived :—Lord BROUGHAM was in the meantime released from the onerous duties of Chancellor by the breaking up of the Melbourne Cabinet—but, nothing was heard of the redemption of his Lordship's "pledge." In the session of the following year, 1836, the state of Lord BROUGHAM'S health was such as to prevent his attending Parliament.

The reader will naturally enquire whether under the law, which Lord BROUGHAM was instrumental to perpetuate, blood has since been shed upon the scaffold?—We regret to say, it has.—ED.

† The clause for abolishing the penalty of death in cases of *constructive burglary* was afterward withdrawn in consequence of the opposition which it received from the ATTORNEY-GENERAL, Sir John CAMPBELL. Need we remind our Edinburgh readers of the eloquent and emphatic terms in which the same learned gentleman

too long fixed the stamp of barbarism on our Statute-book, and which has proved to be as inefficacious to protect our property as it has been disgraceful to our civilization. Truly did that distinguished statesman, Lord GRENVILLE, say in the House of Peers, twenty-one years ago—

‘It is certain, my Lords, that whenever any punishment is disproportionate to the crime to which it is annexed, the feelings of mankind will be arrayed in revolt to counteract the enactments of the law;—and when such disproportionate punishments are capital, human nature will *not tolerate the enforcement of them.*’

The wisdom of Lord GRENVILLE’s observations has since had abundantly the confirmation of experience. The public have been led to reflect more than they did at that time on the enormity, as well as uselessness of making

denounced the “barbarous code” at the Hustings a short time before? (*Ante*, p. 211.)

The following case will serve as an illustration of what is meant by constructive housebreaking: had the offence been committed after night-fall it would have been burglary, and may, therefore, equally serve to explain *constructive* cases of that offence.—ED.

Old Bailey, May 16, 1833. *Before* Mr. Justice BOSANQUET.

“*Nicholas White*, (aged nine years!) was indicted for *feloniously breaking and entering into the dwelling-house of Thomas Bachelor*, on the 19th April, at St. Matthew, Bethnal Green, and stealing therein 15 pieces of paint, value *two-pence*, his property.”

From the evidence of the principal witness, who was also *nine years* old and a looker-on, it appeared that the little urchin, prisoner at the bar upon the *capital* charge of “*breaking and entering*,” had effected this felonious act (!) while peeping in at the shop-window, where, taking a fancy to some children’s painting-colours, he “poked” a stick through a *patched-up* pane of glass—(and, thus perforating it, incurred the legal guilt of “*breaking into the dwelling!*”)—he then raked out the pieces of paint, value *two-pence*. Some little creatures who stood by to witness the exploit, not getting their promised share of half of the “colours,” went into the shop and gave the alarm. The young “housebreaker” was captured, brought up to Worship-street Office, and committed to take his trial!

“Verdict, GUILTY—DEATH. Aged 9.”—(*Vide London Sessions Paper*, 1833, published “by Authority:” p. 462.)

the judicial destruction of human life a thing of familiar occurrence. The result of that reflection has been an increased and increasing repugnance to spectacles of legal homicide, especially for crimes against property; in almost all cases of which the law of capital punishment has become a dead-letter.

Yet there is a danger when bad laws remain on the Statute-book that they may be *revived* for some particular occasion, though they have long been disused.* In such a case they are hidden traps and snares. Thus the *present* Government executed a man for housebreaking,† no person being in the house at the time, and of course no violence committed, although in upwards of 300 cases of conviction for that offence the *preceding* Government had commuted the sentence. So the last man that was executed for letter-stealing‡ suffered, if we are not mistaken, under the present Administration. The case of *Job Cox*, too, is fresh in the recollection of the public, who, although the mercy of the Crown had been extended to him by THE KING in Council, was within an ace of being executed upon the warrant of a late civic functionary.§ Mr. EWART'S Bill, on becoming law, will prevent the possibility of the recurrence of such a "mistake," which was near being more serious than that of the Clerkenwell Sessions.

We have all an interest in protecting letters from depredation; and therefore we have all an interest in obtaining for them that sort of protection which is afforded by reasonable and practicable laws, in place of those that are revolting and inoperative. By taking away the punishment of *death* we render this species of property *more secure*, by making witnesses less reluctant to give evidence for the prosecution, and Juries *less unwilling to convict*.

We would also advise a clause to be inserted in every

* *Ante*, Note, p. 200.

§ *Ante*, Note, p. 121.

† *Druitt*, executed June 5, 1832, *ante*, Vol. i. p. 300.

‡ *Barrett*, executed February 13, 1832, *ante*, Vol. i. pp. 214-217.

Bill abrogating capital punishment, enacting that the offence should be still triable only at the Courts of Assize and Superior Courts, and not at county or borough Sessions.

We believe that Mr. EWART's other Bill for allowing Counsel to address the Jury for prisoners in cases of felony, stands also for a second reading this evening. Surely it ought to require no argument to prove that the Crown ought to have no advantage which is denied the subject in a British Court of Justice when his life or liberty is at stake.—*Morning Herald, Wednesday, May 14, 1834.*

The Lords' Amendments to Mr. EWART's Bill on Letter-stealing and Returning from transportation.

The discussion which took place in the House of Commons on Thursday evening, upon the Lords' Amendments to Mr. EWART's Bill for removing the punishment of *death* from the offences of *letter-stealing* and *illegally returning from transportation*, presented some topics worthy of public attention. The Bill had undergone that sort of mutilation in the House of Lords which cut away its more efficient half [Letter-stealing]. The penalty of death is but nominally attached to the offence of illegally returning from transportation—no execution ever takes place for that offence, and has not for a great many years. The law, then, as far as the capital punishment is concerned, has become obsolete, and no Government would dare to revive it. That part of Mr. EWART's Bill which applied to this offence went to lop off only a withered branch from the Upas tree of legislative extermination.

Of what practical use, it may therefore be asked, was this part of the Bill, which is all of it that the Lords have adopted, while the remainder of it—that which applied to letter-stealing, an offence in regard to which the extreme sentence of the law *is* sometimes carried into effect—they have cut away? We answer that no laws ought to be allowed to remain on the Statute-book which are incapable of execu-

tion. The continuance of laws of death, from which the power of civilized opinion has extracted the sting, causes the wisdom of the Legislature to be brought in question, and breeds contempt for the law itself. It is good that even dead branches should be lopped from our penal Code, and thrown into the fire.*

But there was another reason which we are inclined to think Mr. EWART had in view in proposing the repeal of the capital punishment for unlawfully returning from transportation. There is a law in our colony of Van Diemen's Land, and, we believe, also in New South Wales, by which the penalty of death is annexed to the offence of *attempting* to escape from transportation, and upon conviction for that offence the law, in all its merciless barbarity, is usually carried into effect.† Can the colonial law of death be now executed? Can it be allowed to remain in existence after the British Legislature has solemnly abolished a similar law at home? The unanimous decision of both Houses has been pronounced against a punishment still part and parcel of the law of our Colonies. Great indeed will be the disgrace that will attach to the Government at home if, after this, it does not take such steps as will prevent the scandalous anomaly of punishing with DEATH the *attempt* to commit an offence which, if *completed*, ceases to be *capital*!‡

Yet we think Mr. EWART was right in taking the sense of the House, whether the Bill ought not to be rejected, in consequence of the provision with regard to letter-stealing having been thrown out in the Upper House. The law

* Especially as the "dead branches" are liable to be *recalled into life* at the pleasure of an Adviser of the Crown, according to doctrine avowed in the Speech of a Cabinet Minister.—*Ante*, p. 199-200.

† Regarding the executions in our Australian Colonies, the public may expect some Official Returns, as Mr. HUME moved for them in the Session of 1836.—*See Printed Votes*.—ED.

‡ Mr. EWART's Act, as to Returned Transports, 4 & 5 Will. IV. cap. 67, received the Royal Assent August 13, 1834.

which demands the blood of a person who steals money-letters or their contents, although at variance with public opinion, *is sometimes* executed. There was one victim since the Whigs came into office, if we mistake not, in the person of a man named *Barrett*.^{*} There was very near being another in the person of *Job Cox*, whose case is memorable for the nearly fatal mistake of the late RECORDER, which cost him his seat on the corporate Bench ; and for the exposure of this affair we may take some credit to ourselves. It will be recollected that the warrant for his execution was lodged at Newgate after THE KING in Council had extended to him the Royal clemency. We communicated this fact to the public, with such observations as it called for—the rest is known.[†]

Mr. EWART's Bill would have prevented the possibility of any future RECORDER committing such a mistake ; but the Lords restored the capital punishment to the Statute-book which the Commons had expunged, although experience has proved and daily proves that it is no protection to money-letters passing through the Post-office, and whenever it is attempted to be called into execution, is certain to call forth the sympathy of the public for the offender. To *steal* a Bank-note from a letter is surely not a worse, or more dangerous offence, than to *forge* Bank-notes ; yet the Lords have ‡

* *Ante*, Vol. i. pp. 214-217.

† *Ante*, p. 117-120.

‡ This should be explained. It was by Lord BROUGHAM's suggestion that the capital punishment was not then removed from the offence of *Letter-stealing*, his Lordship undertaking to bring in a general measure in the *next Session*, for the mitigation of the criminal law, upon which Lord SUFFIELD, who had the conduct of Mr. EWART's Bill in the House of Lords, placed a reliance which was not justified by the result.—Mr. EWART, therefore, in 1835 again introduced his Bill to repeal the punishment of Death for that offence, and at the same time included *Sacrilege*, a crime hitherto capital. This Bill received the sanction of both Houses ; and became law, September 10, 1835.—*Vide* 5 & 6 Will. IV., cap. 81.—ED.

declared that the former crime shall still continue to be capital, although the penalty of death has been for some time removed from the latter.

In the debate on Thursday evening Mr. LENNARD, whose enlightened and persevering exertions, along with those of Mr. EWART, in the Commons, and Lord SUFFIELD in the Upper House, deserve the thanks of the country, described such sort of legislation as the mutilated Bill presented, as a mockery of reform—a semblance of improvement without the reality. He questioned the propriety of carrying the old law into effect with regard to letter-stealing, after a solemn and, we believe, an unanimous decision of the House of Commons against it. Lord ALTHORP strongly dissented from this doctrine; but it is not the doctrine of Mr. LENNARD, but of Lord BROUGHAM, whose authority the Hon. Member cited, and who expressed himself strongly to the same effect when Sir R. PEEL'S Forgery Bill was under discussion, although the Noble and Learned Lord gave utterance to sentiments of an opposite description the other day in the House of Peers. But the Whigs of the present day have no ambition to become martyrs to principle.*

Mr. LENNARD also noticed the circumstances of a Learned Judge, during the late Assizes for Devonshire,† having discussed, in his address to the Grand Jury, the merits of a Bill now pending in Parliament—namely, Mr. EWART'S

* *Ante*, pp. 199–201, and Vol. i. p. 274–275.

† Two years afterward the following paragraph appeared in a Morning Paper:—

‘STAFFORD ASSIZES.

‘Mr. Justice PATTESON expressed his satisfaction at the improvement about to take place in the law, by allowing prisoners, in cases of felony, to make their defence by Counsel, by which the labour and anxiety must be greatly relieved. The Learned Judge alluded to some former cases in this County, in which the assistance of Counsel on the part of the prisoner would have been of great service in the investigation of charges dependent upon a variety of minute circumstances.’—*Morning Chronicle*, Monday, July 25, 1836.

Bill for allowing Counsel to make a full defence for prisoners accused of felony. It is a maxim of our Constitution, that the legislative and judicial functions should be kept distinct. The Judges are supposed to be in attendance upon the House of Lords, to give their opinion, when required, relative to questions of law or legislation. The proper place, we presume, for a Judge to give his opinion is there, and not upon the judicial Bench, where he is in the habit of saying to Juries, "Gentlemen, we have nothing to do with the law but to administer it!" The Learned Judge, to whom Mr. LENNARD delicately alluded, as having somewhat overstepped the line of his duty, is as upright and impartial as he is learned and able; but there is a danger that if the precedent were followed of discussing laws pending in Parliament upon the judicial seats, where law is only to be administered, a pernicious practice might arise, which would lead away the minds of Grand Juries from their proper business, and confound the distinctions between judicial and legislative functions.

The sentiments which fell from Lord John RUSSELL in the course of the debate, seemed to shew that he is favourable to a much more extensive mitigation of the Criminal Code than has yet taken place; but then he thinks the whole of it ought to be looked at together. So do we.—But if Government have hitherto shrunk from that duty—the fulfilment of which, in the midst of the toils of war, was one of the great glories of the reign of the late Emperor of the FRENCH—is that any reason why individuals, who cannot wield such power as Government commands, should forbear to achieve such reforms as they can accomplish by their own determination, intelligence, and virtue?

Lord John RUSSELL expressed his regret that there was not a mind of such enlarged capacity as that of the late Sir James MACKINTOSH to take up the subject; but does his Lordship forget how many years MACKINTOSH, after the death of the lamented ROMILLY, slept over the subject without attempting any thing whatever? Does he forget,

that after the accession of the Whigs to power, MACKINTOSH* so carefully hid the reform of the Criminal Law under his cloak of *office* that no part of it was visible? If, then, it were not for the exertions of such men as Mr. EWART, Mr. LENNARD, Lord SUFFIELD, and others, the Criminal Code might still have remained in all that unmitigated ferocity of character which caused His MAJESTY'S ATTORNEY-GENERAL, the other day, to describe it, before the recent alterations, as "the most bloody and barbarous Code that was ever heard of in a civilized country."†

Let it be recollected that even the Commission which Government appointed some time ago to report on the Criminal Laws, and whose First Report has lately been presented, had no authority to deal with any thing more than what constitutes the external reform of those laws, their rearrangement, and consolidation.‡

Let us first make the SPIRIT of the laws what it ought to

* Incredible as it may seem, it is nevertheless true that Sir James MACKINTOSH never once mooted the subject in Parliament *after his acceptance of office* under Lord GREY'S administration.—ED.

† *Ante*, p. 211.

‡ The Commissioners were authorized 'to digest into *one* statute 'all the STATUTES AND ENACTMENTS touching Crimes,'—'also 'to digest into *one other* statute all the provisions of the COMMON OR 'UNWRITTEN LAW touching the same:'—'to enquire and report 'how far it may be expedient to *combine both*' or 'to pass into a 'law the first-mentioned only'—'and generally to enquire and report 'how far it may be expedient to consolidate the other branches of the 'existing Statute-Law, or any of them.' The Commissioners nominated were "Thomas STARKIE, Henry Bellenden KER, William WIGHTMAN, Andrew AMOS, and John AUSTIN, Esquires," and they were directed to certify their proceeding: "within the space of one year after the date of" the Commission, which was issued July 23, 1833. Their First Report (*Parl. Paper* 1834, No. 537,) appears to have been received by Lord BROUGHAM, as Chancellor, on the 24th of June, 1834.

A review of this First Report of the Commissioners will be found in the *Law Magazine*, No. xxvii. In the history of reforms in the

be—what enlightened opinion and Christian civilisation demand; appropriate arrangement and classification is a secondary matter. The former is the work of the Statesman—the latter, of the mechanist. Let us not lose sight of the substance in attending to mere forms.—*Morning Herald*, Saturday, August 9, 1834.

Remarks on Mr. ROEBUCK's Speech to his Constituents upon the Bills brought into Parliament, in the late Session, for mitigating the Criminal Law.

At a meeting of the electors of Bath we observe that Mr. ROEBUCK, one of the Members for that city, appeared to give an account to his constituents of his stewardship during the last Session. Among various other subjects agitated in Parliament, he touched upon the proposed reforms in the criminal law, which were discussed, but though successfully advocated in the House of Commons, failed to pass into law. We quote from the *Bath Guardian* the following passages from his Speech in reference to this subject :—

‘ Three most important Bills were much discussed, and received the sanction of the House of Commons; these were the *Prisoners' Counsel Bill*, that relating to *Wilful Burning*, and the *Highway Robbery Bill*. All these were brought forward by persons unconnected with the Government, and in saying this I say a great deal to people knowing any thing of the mode of conducting business in that House. It is, in fact, next to impossible for any person not connected with Government to carry any measure. However, by

criminal law, the reviewer is not correct in assigning to Sir James MACKINTOSH the merit of introducing the Act (4 Geo. IV. cap. 52,) which, July 8, 1823, put an end to the barbarous mode of interring suicides. The credit of that measure belongs to Mr. LENNARD, who has so often, and so honourably advocated the mitigation of the penal code, and himself introduced two of the Bills passed by the Commons. (*Ante*, pp. 91–94 219.)—ED.

‘patience and perseverance, these three Bills were, at length, brought ‘on.’

After some further observations the Hon. Member proceeded to say,

‘How was the measure [Mr. LLOYD’S, to amend the indiscriminate law of *Arson*,] saved in this case? By an accident. At this*

* The principle of Mr. LLOYD’S *Arson* Bill (*ante*, p. 193) was adopted by the House of Commons, after a discussion, July 10, 1834, when it was read the Second time, upon which occasion, the following excellent remarks were made by the Editor of *The Times* :—

‘On Wednesday, at Northampton, *Valentine Brice* was found ‘guilty of setting fire to a stack of hay. The Jury, who had deliberated for upwards of two hours upon their verdict, recommended the ‘prisoner to mercy. “On what ground, gentlemen?” enquired the ‘Learned Judge. The foreman replied, “On the general ground of ‘humanity.” The Judge rejoined, “I cannot receive a recommendation on such a ground as that. Humanity is best consulted by ‘paying due attention to the laws of the country. Let the prisoner ‘stand down for the present. I shall pass sentence to-morrow ‘morning.”

‘On the morrow, Thursday, the Judge did pass sentence—— ‘sentence of DEATH, and the man is left for execution.

‘Now, that part of the public who observe the proceedings of the ‘Legislature need hardly be reminded that on the very day—Thursday ‘last—on which this man was sentenced to die for setting fire to a hay- ‘stack, the House of Commons read a Second time a Bill entitled “a ‘Bill to alter and amend the Law relating to Wilful Burning”——by ‘which Bill the offence for which this man has been condemned to ‘death, is made a *transportable* offence only, the *capital* punishment ‘being removed.

‘Surely, under such circumstances, the case is one in which the ‘Secretary of State is almost bound to interfere, and arrest the execution of the sentence.’—*Times*, July 12, 1834.—[The convict *Brice*, was subsequently *reprieved*. But, as the *Arson* Bill, along with two other Bills, did not then pass into law, under circumstances explained elsewhere (p. 238), the Government, notwithstanding the recorded judgment of the House of Commons, resumed the practice of shedding blood for the offence of rick-burning, “under the existing law” which

‘moment the [*Whig*] Ministers were out, and it was generally believed a *Dissolution* was about to take place. Such being the case, &c.’

Now, let us do justice to all parties. We have no very high idea of the present House of Commons. Witness its servility to Ministers on the question of the pension list—the assessed taxes—triennial Parliaments—the malt tax, and several other vital questions! But, nevertheless, the House of Commons *did* pass through all their stages the Prisoners’ Counsel Bill, and the Highway Robbery Bill; and why did they not pass the Lords?—Because they were stopped by the interference of Lord BROUGHAM, who deprecated reforms of the criminal law taken up and pursued by individuals, although during the whole of the four years that the Whig Ministers have been in power, nothing could induce them to undertake, on their own responsibility, the reform of the criminal law. Last year, indeed, they did issue a Commission—not to enquire into and report upon the abolition of the penalty of death, and the substitution of reasonable and effective sanctions for that barbarous mode of punishment—but to ascertain the practicability of *arranging and digesting the whole of the [existing] criminal law in one or two statutes*. The want of the Report of that Commission, though it had nothing to do with the question of the penalty of death,* was often urged by members of Government† as a dilatory plea against any reform of the criminal law, and they would have wretches hanged under laws which they confessed to be bad, because they were too indolent to undertake their reform. — *Morning Herald*, *Thursday*, October 30, 1834.

gave that power, and according to the views laid down by the Noble and Learned Lord then occupying the Woolsack, which we have also quoted. (p. 199, 200.)—ED.]

* See *ante* p. 235, as to the duties of the Commissioners.

† See Speech of Lord BROUGHAM, extract inserted *ante*, p. 227, as one instance. Many others could be adduced.—ED.

*Promotion of Sir Frederick POLLOCK and Sir W. W. FOLLETT
to the offices of ATTORNEY and SOLICITOR-GENERAL—
—Their sentiments upon the Criminal Law.*

The demands made for some time past upon our attention and our columns by important political matter have prevented our adverting to the legal appointments of the new Administration, further than merely to notice them. We now avail ourselves of the opportunity to say a few words on the subject. * * * * *

The legal qualifications of Sir Frederick POLLOCK for the office of ATTORNEY-GENERAL are too well known to all that practise on the law side of Westminster Hall to require any attestation, as far as the members of the profession are concerned. The public may estimate his legal fitness for the appointment, by the fact that he has been for several years Leader of the Northern Circuit, by withdrawing from which he leaves, of course, considerable business to those who stood next to him in reputation. His urbanity of manners and kindness of disposition have made him generally esteemed and respected, even by those who differ from him in political opinions.

The new SOLICITOR-GENERAL, Sir William Webb FOLLETT, although but of ten years' standing, has, by the superiority of his talents, well merited even that early distinction. He is a lawyer of great legal acumen, and one of the ablest and most scientific reasoners upon difficult questions of law that have appeared in Westminster Hall in modern times. His manners and disposition are peculiarly frank and conciliating, and, like the ATTORNEY-GENERAL, his mental qualities are not more highly appreciated than his moral worth.

Legal fitness is, of course, the first consideration with regard to such appointments; but, independently of that indispensable recommendation, and of their personal respectability, we confess we are glad to see these two distin-

guished lawyers in the place which they now occupy, because we have reason to believe both are decidedly favourable to a full and efficient reform of the Criminal Law.

Our reasons for believing that the ATTORNEY and SOLICITOR-GENERAL are favourable to a large and effective reform of the Criminal Law are, that the former has evinced that disposition by his Parliamentary conduct, more especially by the earnest support which he gave to Mr. EWART'S Bill last Session, for allowing prisoners charged with felony to make their full defence by Counsel. He delivered an able and convincing speech on the subject, and drew upon his own experience to enforce the arguments for the Bill by facts. He related several instances within his own knowledge of crying injustice and irreparable error which had resulted from the present defective state of the law:* this, too, when the Whig Ministers did all they could to thwart the progress of the Bill, and succeeded in effectually stopping it, as well as another Bill in the House of Lords to reform the Criminal Law.†

The SOLICITOR-GENERAL has had no opportunity hitherto of declaring his opinions in the House of Commons; but we recollect, that, in a speech which he delivered to the electors of Exeter, two years ago, he expressed sentiments decidedly favourable to a species of reform which all the truly enlightened and Christian portion of the British public have so much at heart.

When we find that two lawyers, holding such opinions on the Criminal Law, are selected to be His MAJESTY'S chief Law Officers, our hopes that the efficient reform of that department of our law will be promoted, or, at least, not thwarted, by the present Government, are, we trust, not without reasonable grounds of confidence; nor can we avoid adverting here to a very different state of things, which will be best explained by the following quotation from a

* *Ante*, p. 216.

† *Ante*, Notes, pp. 201, 215, 227, 238, also pp. 146-149.

speech of the lamented ROMILLY, when he was struggling, under the most adverse circumstances, to purify our Criminal Code from barbarous enactments, and to infuse into it a spirit of beneficent wisdom :—

‘ If I had consulted only my own immediate interests,’ said that great and good man, ‘ my time might have been more profitably employed in the profession in which I am engaged. If I had listened to the dictates of prudence—if I had been alarmed by such prejudices—I could easily have discovered that the hope to *amend the law* is not *the disposition most favourable to preferment*. I am not unacquainted with the best road to Attorney-Generalships and Chancellorships ; but in that path which my duty dictates to be right I shall proceed ; and from this, no misunderstanding, no misrepresentation, shall deter me.’

Such was the language of a man whose political conduct, rejecting all selfish considerations, was guided by a sense of duty and principle alone. * * * The declaration which Sir W. W. FOLLETT made the other day at Exeter is highly creditable to his manliness and candour. Towards the close of his Speech, which we reported yesterday, he says,—

‘ I tell you frankly and freely, that I do confide in the principles and declarations of this Government. I shall give the Government my cordial support ; but, *if they violate the spirit of those principles and declarations, that moment I cease to support them*—that moment will I cease to hold the Office which His MAJESTY has thought fit to bestow upon me.’

It is a novel thing for a law officer of the Crown to adopt so independent a tone. It cannot but raise the character of Sir W. W. FOLLETT in the eyes of the constituency whom he thus addresses. * * * *Morning Herald, Friday, December 26, 1834.*

Good Effects of discontinuing Capital Punishments in BELGIUM.

It was stated in our Paper the other day, that in the Sitting of the 3d instant, in the Belgian Chamber, M. DE

BROUCKERE brought forward a proposition for the abolition of capital punishments—the same that he presented in 1832, and in which he did not persevere because the sentences of death were *always* commuted by the KING to imprisonment for life.

We have long been of opinion, and that opinion we do not now advance for the first time, that examples of legalized homicide have an indirect, but a certain tendency to harden the hearts of that class of people for whose moral instruction they are said to be intended. Any person who is known to be fond of seeing executions is in common opinion set down as a person of ferocious disposition, or brutalized habits. But the example of the malefactor undergoing the reformatory discipline of a well-conducted prison, or penitentiary, has a very different effect. Here the example is as beneficial to the morals of the spectator, as in the other case it is pernicious. Thus crime is more effectually repressed by the saving, than the destruction, of human life. The sacrifice that public justice makes in exterminating the offender is worse than a barren example. Independently of the higher motive derived from religion, which ought to make the Christian legislator doubt *his right** to

* ‘*What RIGHT, I ask, have men to cut the throats of their fellow-creatures?* Certainly not that on which the sovereignty and laws are founded. The laws, as I have said before, are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is the aggregate of that of each individual. Did any one ever give to others the right of taking away his life? Is it possible, that in the smallest portions of the liberty of each, sacrificed to the good of the public, can be contained the greatest of all good—LIFE? *If it were so, how shall it be reconciled to the maxim which tells us, that a man has no right to kill himself—which he certainly must have, if he could give it away to another?*

• But the punishment of death is not authorized by any right, for I have demonstrated that *no such right* exists. It is therefore a war of a whole nation against a citizen, whose destruction they

take away that life which is the inestimable gift of the CREATOR, those who make laws ought to consider how far the examples of judicial death diminish that veneration for the sacredness of life, which the Legislature ought to cherish rather than destroy in the minds of the people.*

Frequency of executions in any country is generally followed by a proportionate increase of crimes of violence and blood. When the Legislature lightly estimates human life, the people are apt to undervalue it. Laws of a vindictive character consecrate, as it were, the principle of revenge; and we cannot wonder that the more ignorant portion of the people *emulate the example of the law*, by the wanton or revengeful shedding of human blood. Laws of a mild character teach mildness to the people. Under such laws the popular mind has not that practical education to deeds of violence which cruel examples produce. Revolutions are always most bloody in countries whose laws have most familiarized the people with spectacles of vengeance.†

consider as necessary, or useful to the general good. *But if I can further demonstrate that it is neither necessary nor useful, I shall have gained the cause of humanity.* * * * * * *Marquis Beccaria.*

* ‘The punishment of death is pernicious to society, from the example of barbarity it affords. If the passions, or the [practice] of war, have taught men to shed the blood of their fellow-creatures, —THE LAWS, which are intended to moderate the ferocity of mankind, should not increase it by examples of barbarity, the more horrible, as this punishment is usually attended with formal pageantry. *Is it not absurd that the laws, which detest and punish homicide, should, in order to prevent murder, publicly COMMIT murder themselves?*’—*Marquis Beccaria.*

† ‘If the people had not been familiarized to scenes of judicial homicide, would France or England have been disgraced by the useless murder of LOUIS or of CHARLES? If the punishment of death had not been sanctioned by the ordinary laws of those kingdoms, would the one have been deluged with the blood of innocence,

Belgium affords remarkable proofs of the truth of both propositions. When the executions in that country were numerous, crimes of blood were also numerous. When the enforcement of the capital laws was greatly mitigated, crimes of violence diminished. When the axe was laid aside, as an instrument of justice, a further diminution of such crimes took place—thus practically proving that laws which do not respect human life, either infuse into human minds the murderous principle, or stimulate it into action. Our proofs as to Belgium are taken from the official tables lately printed for the Legislature, containing an abstract of executions—and prosecutions for murder—every five years, commencing with the beginning of the year 1800. Here they are:—

BELGIUM.	Total executed for various crimes.	Persons convicted of MURDER.
5 years ending with . . . 1804	235	150
5 1809	88	82
5 1814	71	64
5 1819	26	42
5 1824	23	38
5 1829	22	34
5 1834	None.	20*

The above Tables clearly shew that we do not advance an unsupported theory when we state that laws which make

‘ of worth, of patriotism, and science, in her revolution? Would
‘ the best and noblest lives of the other have been lost on the
‘ scaffold in her civil broils?’—*Livingston's Report to the Legislature of Louisiana on Penal Law.*

* The Table which appeared in the *Morning Herald*, ended with 1833 inclusive. Possessing the results of the following year, we have been enabled to make up the Table, as here presented, to a later period, inserting corresponding corrections in the figures quoted in the text. A valued Correspondent, who has given much of his attention to the subject of Crimes and Punishments, thinks that in taking a comparative view of two periods, the year of the *Belgian Revolution* (1830,) should

spectacles of judicial homicide familiar to the people, have a natural *tendency to increase the crime of murder*. We see *that* crime decreasing as executions decreased during a course of 35 years, there being in the first five years of that period 235 executions, and 150 convicted of murder, while in the last five years, in which there were *no executions*, the number of convictions of murder amounted to 20 only. M. DE BROUCKERE has, then, another motive beside that of mere humanity in preventing executions. The object of M. DE BROUCKERE is to prevent the increase of the crime of murder, by preventing the renewal of those judicial examples which have a tendency to efface from the mind of the people that instinctive repugnance to taking human life, which HE who has given that life has implanted in the heart of man.

* * * * *

In support of what we have stated, and in answer to

be *excluded*, because the administration of justice must have been in some degree interrupted. He therefore suggests that it would be better to make the comparison for the *four* years which immediately *followed* that year, with *four* which *preceded* it. Thus:—

BELGIUM.	Total executed for various crimes.	Accusations of MURDER.
4 years ending with 1829 ..	17	45
4 years ending with 1834 ..	None.	41

Viewing the subject in this way also, the result is in favour of the principles advocated in the *Morning Herald*. The reader will observe another difference in the two Tables before him, inasmuch as the latter gives the number of "*Accusations*," whereas the former relates to the number of *Convictions*. In both cases under the head of "Murder" are included the crimes—"assassinat, empoisonnement, and parricide;" but, of course, not manslaughter ("*meurtre*") which, because it is not a premeditated offence, is excluded as not belonging to the question under consideration.—ED.

Count D'ARSHOT, Chamberlain of King LEOPOLD, we will here quote a passage from a treatise upon public punishments and their effects, which was read to a Society that met at the house of the celebrated Benjamin FRANKLIN, in the year 1787. It is as follows :—

‘ The Duke of TUSCANY, soon after the publication of the Marquis of BECCARIA’s excellent treatise upon this subject, abolished death as a punishment for murder. A gentleman, who resided five years at Pisa, informed me that only five murders had been perpetrated in his dominions in twenty years (since the abolition). The same person added, that, after his residence in Tuscany, he spent three months in Rome, where death is still the punishment of murder, and where executions, according to Dr. MOORE, are still conducted with peculiar circumstances of public parade. During this short period there were sixty murders committed in the precincts of that city. It is remarkable that the manners, principles, and religion of the inhabitants of Tuscany and Rome are exactly the same. The abolition of death alone as a punishment for murder produced this difference in the moral character of the two nations.’

Here is the answer to Count D’ARSHOT ; nearly fifty years ago that answer was given to all who quote the history of Tuscany, as he has done, in favour of capital punishments. It is true the capital punishments were restored in Tuscany, not by Duke LEOPOLD, for he was perfectly satisfied with the result of their abolition. They were restored for the same reason that they were in ancient Rome, after the *Porcian law* had abolished the penalty of death—because the Government fell into the hands of revengeful politicians.—*Morning Herald, Tuesday, February 10, 1835.*

Two men, at Reading, ordered for execution under the Statute, the repeal of which Lord BROUGHAM opposed in the last Session of Parliament.

In endeavouring to clear away the vast mass of capital punishments that disgraced our Statute-book, and revolted

the feelings of society, we advocated no rash or experimental innovation upon our penal system. The *capital statutes* were almost all in themselves *innovations* upon the comparatively mild and merciful *COMMON OR UNWRITTEN LAW* of the realm—a law so ancient that its principles and maxims can only be collected from that antique usage which has struck its roots deep into the very foundations of the Monarchy of England. To purify the Criminal Law, therefore, from the ineffective severity of cruel and exterminating punishments is not an experimental novelty—it is a *restoration*.

It will be recollected that in consequence of the late Whig Ministers* neglecting to submit any measures to Parliament for the mitigation and reform of the penal code, with the exception of two Bills relative to forgery† and fraudulent coining,‡ several Bills were, during the last four years, brought into Parliament for the repeal of capital punishments by individuals, who took upon themselves the labour and responsibility which ought to have been undertaken by the law-officers of the Crown. Of those Bills, such as have become the law of the land have worked well, as we have shewn from Parliamentary returns. They have greatly diminished the cruel and disgusting spectacles which only brutalize the ignorant multitude who frequent executions under the same feeling that drives them to the gin-shop—the love of strong excitement. But while those exhibitions—that teach the people cruelty by law—have diminished, the crimes, which were vainly endeavoured to be repressed by such examples, have decreased; thus practically establishing the truth of the maxim, that it is not the *severity* but the *certainly* of punishment that deters from crime.

Of the Bills introduced into the House of Commons to mitigate the Criminal Code and improve it, our readers will recollect that one was a Bill brought in by Mr. LENNARD,

* The Ministry of which Earl GREY was head.

† *Ante*, Vol. I. p. 306, *et seq.*

‡ *Ante*, Vol. I, p. 261.

to abolish the punishment of death for highway robbery*—a wise and salutary alteration, for the law that confounds robbery with murder, by inflicting on both the same punishments, excites, as Dr. JOHNSON truly stated, the perpetration of the greater crime to prevent the detection of the less. To murder the person that is robbed removes, perhaps, the only evidence, while it does not aggravate the punishment. When Legislators or Judges act upon passionate or vindictive feelings, they always commit errors greatly prejudicial to the interests of society.†

Mr. LENNARD's Bill passed the House of Commons—the decision of the representatives of the people was almost unanimous in its favour. That Bill, however, along with one of Mr. EWART's, allowing prisoners accused of felony to make their *full defence by Counsel*,‡ was stopped in the House of Lords, and, we regret to say, at the suggestion of Lord BROUGHAM,§ who talked of the labours of a Commission|| to enquire into the Criminal Law, which has made a report¶ having no reference whatever to the abolition of capital punishments. If it had not been for that unexpected opposition, which the “friend of ROMILLY” gave to those Bills, it is highly probable that they would have been now among the laws of the land. Let us look at the practical consequences. We can hardly bear to contemplate them. The lives of human beings are still to be sacrificed, in some instances, because persons charged with capital offences are not allowed to make a full defence by Counsel; in others, because a law, which the representatives of the

* *Ante*, p. 219, and Note, p. 227.

† ‘The countries and times most notorious for severity of punishments, were always those in which the most bloody and inhuman actions, and the most atrocious crimes were committed; for, the hand of the legislator and the assassin were directed by the same spirit of ferocity.’—*Marquis Beccaria*.

‡ *Ante*, pp. (Note) 78, 214. § *Ante*, p. 227. || *Ante*, p. 235.

¶ *The first Report of the Commissioners*.

people declared ought to be erased from the Statute-book, has been retained in defiance of reason and public opinion.

The practical consequences are to be seen upon the several circuits which are now in progress. At Reading Mr. Justice COLERIDGE *has left two men for execution*, who were convicted of assault and highway robbery, but who would not have been so punishable under Mr. LENNARD's Bill. We do not mean to confound a decision of the House of Commons with a law passed by the whole Legislature; but where human life is concerned, we think that a decision of the House of Commons against the capital law ought to be a sufficient reason with the Crown to exercise its prerogative of mercy.* Public opinion has spoken through the House of Commons against the present law; and laws not supported by public opinion, want all that which constitutes the moral force of example.

It will also be recollected that a Bill was last Session brought into Parliament by Mr. LLOYD, the late Member for Stockport, to amend the law of *arson*, by removing the capital punishment in cases where human life is not lost or necessarily endangered. That Bill passed the Second reading in the Commons, but, on account of the lateness of the Session, it was not proceeded with.† At Salisbury Mr. Baron GURNEY has left a man for execution whose crime would not have been capital under the amended law.‡ There

* The same opinion had been stated in Parliament by several Members of the Legislature, Lord SUFFIELD, Mr. LENNARD, &c. See *ante*, pp. 199, 233.—ED.

† *Ante*, pp. 194, 237.

‡ The convict alluded to was *George Knowlton*. After the trial the prosecutor, wishing that *his life* might be spared, came forward to speak to his previous good character. This was of no avail. He was executed, and is said to have died "very penitent," declaring at the scaffold, that he bore no ill-will to any of the witnesses.—Is it not probable that his crime would be almost forgotten in the sympathy excited at such a moment?—ED.... (See *ante*, Note, p. 237.)

may be other instances which have not fallen at present under our observation. What we have mentioned will suffice by way of example.

It is our wish to direct the attention of Government to the subject. Under the special circumstances that we have stated, we trust His Majesty's responsible advisers will not think the Royal clemency would be misapplied. We believe no Sovereign ever sat on the throne of this country who was more disposed than our present SOVEREIGN to "administer justice in mercy," according to the terms of his Coronation oath. Is life or property less secure in London at the present time, where no execution has taken place for almost two years, than in former times, when nearly one hundred human lives have been offered up to vindictive laws in a single year? The answer which experience gives is satisfactory and triumphant.—*Morning Herald, Tuesday, March 10, 1835.*

Respite of the two men at Reading.

We lately noticed the case of two men who had been convicted of highway robbery, and left for execution by Mr. Justice COLERIDGE, at Reading. Subsequently Mr. PEASE noticed the case of those convicts to the Home-Secretary, in the House of Commons, reminding him, as we had felt it our duty to remind the public, of the Bill introduced by Mr. LENNARD to abolish capital punishment for the offence, and which passed the House of Commons in the last Parliament. We thought, that, in a question of public morality affecting *human life*, the solemn decision of the House of Commons against the capital punishment ought to have great weight with the Crown in inducing it to exercise the prerogative of mercy, until a law so pronounced against by the popular branch of the Legislature shall have been, as it must be, erased from the Statute-book.

Questions of party politics are not always decided in the

House of Commons in accordance with public opinion ; but the reform of the criminal law is a question altogether disconnected with party politics. In every step which the House of Commons takes towards the reformation of that law, by substituting moderate and effective punishments for those which are inhuman and ineffectual, it but follows the course which public opinion points out, and which leads to new triumphs of civilization. Of what use can that species of punishment be, as an *example*, which public feeling revolts at, and which public opinion denounces ?

It is with pleasure we now learn that the two convicts, to whose case we alluded, have been since respited. In that and some other instances the present Government* has evinced a laudable deference for public opinion, and in doing so we can with confidence say, that it acts not more in accordance with the sentiments of an enlightened people than with the feelings of the SOVEREIGN now upon the throne, whose aversion to the infliction of the punishment of death entitles him to the highest admiration of those who most reverence power when it is adorned by mercy.

We would also remind the Government that a Bill to alter the law of *arson*, which is less discriminating in this country than in almost any other, was read a Second time in the House of Commons last Session ; but being introduced late in the Session, it was not proceeded with.† Need we say that Bill would have taken away the capital punishment from arson, except in those cases in which it was committed under circumstances whereby life was lost, or necessarily endangered ? We see, however, and we regret to see, that in several cases which that Bill would have rendered non-capital, persons have been left for execution during the present Assizes in various parts of the country.

* The Administration referred to was that of Sir Robert PEEL.—ED.

† This paragraph is purposely preserved, although in part a repetition of that at p. 249.

If the punishment of *death* could have stopped or diminished this crime, it would have been stopped or diminished long ago; but it has increased, notwithstanding the numerous sacrifices of life which have taken place during late years.* The *Poor Law Amendment Bill* is calculated to increase the crime by driving the poor to desperation. Why go on with those useless sacrifices of human life? Is not the punishment of transportation for life, as now enforced, sufficiently severe? Why resist public opinion for the sake of these revolting examples that are barren and unprofitable?—*Morning Herald, Friday, March 27, 1835.*

Capital Conviction of two men under the LANSDOWNE Act.—Clemency of Mr. Justice VAUGHAN, and his admirable address to the prisoners on his ordering the sentence to be "recorded."

A capital case, tried at Bedford, and connected with the Game laws,† will be found in our reporting columns of to-day. Great violence was committed upon the prosecutor, a game-keeper, who, with his comrade, endeavoured to apprehend two poachers in a wood, at night. It was feared, upon conviction, that the prisoners would have been left for execution. The capital penalty was, however, remitted, and the circumstances under which it took place reflect great credit upon Mr. Justice VAUGHAN, whose admirable address we have reported. We are quite sure that the lenity exhibited on the judgment-seat, on this occasion, will have a much better moral effect than any example on the scaffold.

ASSIZE INTELLIGENCE.—NORFOLK CIRCUIT.

Bedford, March 16.

William Taylor was put to the bar charged with the capital offence of *cutting* and *wounding* John Whittamore, with intent to murder him. There were also counts laying the intent to be, to *maim*.

* *Ante*, Note, p. 194, and p. 223.

† For some valuable remarks by Mr. Baron BAYLEY on the subject of the game laws, see *ante* pp. 67, 69.

to disable, to disfigure, and to prevent the lawful apprehension of him (the prisoner). *John Penwright* was charged in the same indictment, as an aider and abettor in the said felony.

Mr. GUNNING and Mr. BYLES prosecuted the Prisoners, and Mr. SMITH defended.

James Bailey, a gamekeeper to Sir James Osborne, deposed that Oxley Wood, the place stated in the indictment, is a game-preserve, and that he ordered on Friday night, the prosecutor, John Whittamore, and another assistant gamekeeper, named Morris, to watch in the Wood. They had general orders to apprehend all poachers found there. He also proved that there is no thoroughfare through Oxley Wood.

John Whittamore, the prosecutor, appeared in the witness-box with his head tied up in a handkerchief; a muscular and robust man, but looking deadly pale. His injuries, however, did not prevent him from giving his evidence in a clear and audible voice. He deposed that he went on the night in question, in consequence of orders received from the former witness, along with Thomas Morris, to watch Oxley Wood. They heard a gun discharged in that Wood after midnight, on the 16th of January, and in about half-an-hour after heard another gun. The report of the last gun was within about 150 yards of where they were. It was a very moonlight night. He and Morris proceeded immediately in the direction of the report. On approaching the spot, they saw two men standing in the ride in the Wood. The prisoner *Taylor* was one of them. They were stooping down when he first saw them; he was within about 37 yards of them when he first saw them; that was but a minute or two after the last gun was fired; when he came near, *Taylor* struck him on the head with some weapon which he had in his hand; neither of them said any thing to each other; whether the blow knocked him down or not he could not say; he did not feel a second blow, he was so stunned by the first; could not say what happened after that; when he came to his senses, next day, his head was very bad, and he suffered a great deal of pain: he had several wounds on his head. (Here the witness uncovered his head, which still bore evident marks of the injuries which he had received.) He denied that he had offered any violence to the man who struck him, but admitted he was running towards him with the intention of taking him into custody.

[Other witnesses were called who corroborated the above evidence.]

Mr. LAYMAN, a surgeon, who attended Whittamore, said that he found him insensible in bed on the morning of the 17th of January. On examining the head he found his skull was laid bare in five places; three of them were about a finger's length. There was a fracture at the back part of the head, through which a small portion of the brain had exuded. He had some bruises on the side. He was unable to answer questions. The wounds on his head were mostly given from some one striking in front. Some of the blows had glanced. The skull in some places was "like polished ivory." He thinks the man is now in a fair way to do well, and, that with temperance, he may continue to live for a long time.

Mr. Justice VAUGHAN carefully summed up the evidence, and the Jury immediately returned a verdict of *Guilty*.

Subsequently to the conviction Mr. BARBER, a Clergyman, stated to the Learned Judge, that he could have given evidence to character on behalf of the prisoner *Taylor*, if he had been called.

Mr. Justice VAUGHAN directed him to be sworn, and Mr. BARBER then deposed that since *Taylor* came out of prison, where he had been about two years ago, he resided in his parish, and his conduct was most exemplary. During the whole of the two years in which he lived under his own observation, he was attentive to his religious duties, and behaved like an honest, industrious, and quiet man: so much so, that it was a matter of great surprise that he could have been guilty of the violent act of which he now stood convicted.

The Keeper of the gaol stated that the latter part of *Taylor's* term of imprisonment for a former offence had been remitted by the Crown in consequence of his extremely good conduct in prison.

After the trial of some other prisoners, the Learned Judge ordered *Taylor* and *Penswright* to be placed at the bar, from which they had been removed on the verdict being pronounced.

Mr. Lynes STEPHEN, in whose occupation Oxley Wood is, got into the witness box, and begged to recommend the prisoners to the mercy of the Court. He said he was authorized by the PROSECUTOR to make the same application from him.

Mr. JONES, the Clerk of Arraignment, then asked the prisoners, in the usual form, "What they had to say why they should not receive the judgment of the law?"

Mr. Sydney TAYLOR rose to address the Court. He said, that in the absence of the Counsel for the prisoners, who was not aware of

what had transpired since the verdict—or he was sure he would have felt it his duty to make some application to the Court, he (Mr. T.) now took the liberty, which he trusted his Lordship would excuse, to make a suggestion on behalf of the prisoners, in answer to the formal question which preceded judgment. The Jury had heard a most respectable and worthy Clergyman give a character of the prisoner *Taylor* which extended over two years, during which he resided under his immediate observation. Though guilty of a previous offence, his good conduct, during the interval between his coming out of prison and his recent offence, was such as raised a fair presumption that he had been penitent for that offence, and had resolved to amend his life. For two years he continued to walk strictly in the path of industry and peace; but unfortunately some temptation had led him again into crime, and the law now claimed his life. He hoped both his Lordship and the Jury, notwithstanding the great violence which he had committed—but which was certainly as sudden and unpremeditated as it was criminal—would think, after what they had heard, that he was still not incapable of repentance and amendment. He was the principal felon, though his comrade was equally guilty in the eye of the law. He trusted the Learned Judge, whose characteristic benignity and impartiality he need not expatiate upon, would not think the moral example of punishment for a crime of great violence the less effectual because of complying with the prayer of the Prosecutor, whose application for mercy to the prisoners did him so much credit. It would be but to act upon that maxim which formed an essential part of the King's Coronation Oath, that justice should be administered in mercy. In order to make that prayer the more effectual, and to prepossess the mind of the Learned Judge, who had a most painful duty to perform, in favour of a mitigation of the awful sentence of the law, he suggested to the JURY to add to their verdict, in consequence of what had transpired since they delivered it—that which they had a right by usage to add—a recommendation to mercy.

The JURY consulted together for a moment or two, and the Foreman then said, “My Lord, we all join in recommending the prisoners to mercy.”

Mr. Justice VAUGHAN said ‘that the distressing duty ‘which the verdict of the Jury in a case like the present ‘seemed, at first, to impose upon him, had inflicted a pang ‘upon his heart; he never felt more poignantly the anguish ‘attendant upon the duty of pronouncing that awful sentence

' of the law, which cuts off human beings in their crime from
 ' among the living, than in the present instance. He trusted
 ' that the noble maxim which was incorporated with THE
 ' KING'S Coronation Oath, to which the Learned Counsel
 ' had alluded, was engraven on his heart, and that it was at
 ' all times his wish to administer justice in mercy. In the
 ' present instance, he was glad to be relieved from the pain
 ' of supposing that he could not recommend to HIS MAJESTY
 ' the sparing of life without betraying the public interests.
 ' The evidence which had been given since the verdict by
 ' the Rev. Mr. BARBER, shewed that *Taylor* had been up to
 ' a very short period since, during two years, a man of
 ' remarkably good conduct. It was true that he was, pre-
 ' viously to that, two years in prison under conviction for
 ' another offence; but, as the Keeper of the gaol had stated,
 ' his conduct was so exemplary while there, that the Visiting
 ' Magistrates interested themselves for him, and, upon their
 ' application, the remaining part of his sentence was par-
 ' doned by the Crown. In addition to those topics of
 ' mitigation there were the recommendations to mercy of
 ' the Prosecutor and the Jury. Under all these circum-
 ' stances his mind leaned to the side of clemency. Violent
 ' as the conduct of the prisoners had been, and great as were
 ' the injuries inflicted upon the prosecutor, he thought he
 ' did not betray his public duty by declining to pass the
 ' extreme sentence of the law. He hoped the mercy which
 ' was about to be extended to the prisoners would have no
 ' prejudicial influence upon society. He wished that
 ' wherever the fact of mercy was known, the circum-
 ' stances out of which it had arisen should be known also.
 ' He had, therefore, great gratification in being able to state
 ' that the lives of neither of the prisoners would be forfeited;
 ' beyond that he could promise nothing. The recommen-
 ' dation of the Jury had great weight with him, and he
 ' would direct the sentence to be "recorded;" but the
 ' prisoners must be prepared to leave this country for ever.'

The countenances of the prisoners, who had expected to die, partook of the expression of satisfaction which the able and merciful address of the Learned Judge made on a crowded court.—*Morning Herald, Wednesday, March 18, 1835.*

Prisoners' Counsel Bill, and Mr. EWART'S Bill to abolish capital punishment in cases of Letter-stealing, and Sacrilege.

MR. EWART'S Notices of motion relative to the Prisoners' Counsel Bill, and the Capital Punishment Abolition Bill, stand for this evening. The object of the former Bill, we need hardly say, is to remove from the administration of British justice the reproach of denying a prisoner accused of a capital offence, or of any felony, the right of making his full defence by Counsel. In short, it only asks the Legislature to recognise the principle of even-handed justice between the Crown and the prisoner. * * * * *

As to the other Bill, of which Mr. EWART has given Notice of motion, we do not know to what extent it goes,* but we think that it might be very comprehensive without asking too much. The spirit of enquiry which has been awakened of late years, not only in this country, but in several others, touching the effects of capital punishments, has been the means of throwing a great deal of light upon criminal jurisprudence, and has shewn that sacrifices of human life are not only not necessary to deter men from crime, but that they are *less effective* for this purpose than punishments which do not revolt the natural feelings of mankind.

We have published, from time to time, several calculations founded upon Parliamentary Returns, among others

* The Bill in question related to *Letter-stealing* and *Sacrilege*.—We have elsewhere stated (*ante* p. 232,) that it was passed by both Houses, and enacted Sept. 10, 1835, being 5 & 6 Will. IV. cap. 81.—E.D.

the convincing Tables so ably compiled by Mr. WRIGHTSON.* We have given Returns from BELGIUM, pointing to a similar result.† More recently the accurate and intelligent M. DUCPETIAUX, the Inspector-General of Prisons in the latter country, has strikingly shewn the inefficiency of capital punishments in his *Statistique de la Peine de Mort*; or rather he has shewn, that with the decrease of executions, the most dangerous and malignant crimes diminish. Omitting the curious details of his calculations, for which we have not room at present, we will merely state the great results. He takes the seven provinces of Belgium, and shews that during a space of *nineteen* years, ending with 1814, in which there were 533 executions, the number of murders, including poisoning, was 399, or 21 murders *per annum*. That during a space of *fifteen* years, ending with 1829, in which the executions were only 71, the murders had diminished to 114, or not quite 8 *per annum*—that during *five* years ending with 1834,‡ in which there had been *no executions*, the murders had decreased to 20, being but 4 *per annum*. [Or, state it thus:—(Ed.)

BELGIUM.	EXECUTIONS.	MURDERS.
In 19 years ending with 1814.	533	399 or 21 <i>per ann.</i>
In 15 years ending with 1829.	71	114 or 8 <i>per ann.</i>
In 5 years ending with 1834.	None.	20 or 4 <i>per ann.</i>

Thus the mitigation of the sanguinary severity of the law, and, in the last period, its practical abolition, was so far from emboldening men to commit crime, that it appears to have produced the opposite effect—as if the greater mildness of the law infused itself into human morals, and restored to human life that protection from violence which laws, that *familiarized the popular mind with the shedding of blood on the scaffold*, had only broken down. The effect ascribed by the Roman poet to the cultivation of the liberal

* *Ante*, p. 101.† *Ante*, p. 244.‡ In the text we have combined the results for 1834. (See *ante*, Note, p. 244.)—ED.

arts may be as truly attributed to enlightened penal legislation—

“ Emollit mores nec sinit esse feros—”

whereas cruel and barbarous laws taint the human mind with their fierceness, and cause it to reflect their own vindictive image.—*Morn. Herald Wednesday, May 20, 1835.*

PRISONERS' COUNSEL *Bill continued—Second Reading—*
Speech of Mr. Horace Twiss.

Mr. EWART, whose indefatigable exertions to ameliorate and improve the Criminal Law deserve the highest praise, has again carried through the Second reading his Bill to allow prisoners charged with felony to make their full defence by Counsel. It is worthy of observation that not one of the “ Liberal ” party spoke in its support, with the exception of Sir George STRICKLAND; and that the best speech in favour of it was made by a Conservative, Mr. Horace TWISS.* That logical and luminous speech remained unanswered, as, indeed, it was unanswerable. He well exposed the fallacy of the vulgar maxim that “ the Judge is Counsel for the prisoner,” a maxim not more absurd in theory than false in practice.—*Morning Herald, Friday, June 12, 1835.*

[It has already been stated (*ante*, Note, p. 78,) that this Bill was again passed by the Commons in 1835, and by what means its defeat was, for that session, brought about in the other House. Mr. EWART however renewed it the following year, and the next article upon the subject will be found under date February 19; another article also, after the Second reading of the Bill in the House of Lords, June 25, 1836, when it had received the important advocacy of Lord LYNDEMURST, will appear in its proper place.—ED.]

* We have mentioned (*ante*, p. 218,) the share taken by Mr. Horace TWISS in the debate in the House of Commons, April 25, 1826. On the present occasion the observations of that gentleman, as reported in the *Morning Post* of June 11, 1835, were replete with practical information and the soundest reasoning.—ED.

*Case of the Convict Williams, ordered for Execution at the Privy Council, soon after the return of the WHIGS to office, but afterwards reprieved in consequence of the exertions of Mr. LEESON.**

We copy the following paragraph relative to the case of the convict *Williams*, who is ordered for execution at Newgate, on Tuesday (to-morrow), from a Morning Paper :†—

‘ (From a correspondent.)—*Thomas Williams*, who was convicted in March of an offence against the person of a child named *Margaret Pugh*, is ordered for execution on Tuesday next. The determination to execute this unhappy person has excited a feeling of painful surprise in some quarters, as circumstances had transpired since the trial which gave rise to serious doubts as to the propriety of his conviction of the capital charge: &c.’—[Some remarks are then added as to the nature of the case, and the exertions of Mr. LEESON, a surgeon, who it is stated ‘ had no previous knowledge of any of the parties, but felt it due to humanity to save, if possible, the life of a fellow-creature whom he believed to have been wrongly convicted.’

It is now nearly two years since any execution has taken

* ‘ We beg to call the attention of the Secretary of State for the Home Department, and of the RECORDER of London, to the letter of Mr. LEESON, a surgeon, on the case of *Williams*, whose execution is fixed for to-morrow.’—*Times*, Monday, June 8, 1835.

In the letter referred to, Mr. LEESON says, ‘ I have consulted many medical men of eminence and experience, and have stated my opinions to them on the crime; and they have every one declared in support of them. * * * * * The late RECORDER of London [KNOWLYS,] as well as Baron GURNEY and others have decided in favour of the same views upon cases tried before them, and when I stated such views, being at the time employed in my professional capacity.’

[Great credit is due to Mr. LEESON for his exertions. He intends, we hear, to bring the subject under the notice of Medical Jurists, with a view, it is presumed, not to enlarge the code of extermination, but, by the substitution of rational and more adequate penalties, to render the law more effectual in the repression of crime.—ED.]

† *The Times*, Saturday, June 6, 1835.

place in London ; and during that long and unexampled rest of the machinery of death, public morality, as is proved by official returns, has not deteriorated. Spectacles, which are well known to have no other effect than brutalizing the feelings of the multitude, can well be spared without depriving Justice of one particle of the useful severity of her power. It will be admitted, at all events, by all rational persons, that the machine of human extermination ought not to be again set to work, except in a case of the heaviest crime, and where the guilt of the culprit is clear and unequivocal. Of what moral example can it be to put to death a human being, about whose guilt, as far as the capital charge is concerned, great doubts are entertained ? We recollect, that when Sir Robert PEELE came into office, one of the Whig Evening Journals exclaimed—" Will the people entrust the execution of the Criminal Law to the friends of cruel and sanguinary punishments ?" Now, during Sir Robert PEELE'S Administration, that Minister had to advise the King in Council upon some very serious cases of capital convictions at the Old Bailey ; yet no execution was ordered ; but scarcely are the Whigs reinstated in power when we hear of the slumbering functions of the London executioner being called again into action.* Let our readers learn under what circumstances. We adjure the Government to reconsider its decision before it be too late.—*Morning Herald, Monday, June 8, 1835.*

* At this time about *nine* years had elapsed without an execution for a similar offence in London and Middlesex, the last having taken place at the Old Bailey in 1826. The course pursued by Ministers is unaccountably inconsistent in men who, when out of office, used to assert with ROMILLY, that the *certainly* of a milder punishment was *more effectual* in repressing crime than the *contingency* of the extreme penalty, a doctrine especially applicable to the offence in question ; for, in the seven previous years, only 2 convictions were obtained out of 38 commitments in London and Middlesex.—ED.

The same Case continued.—Respite of the Convict.

We published, yesterday, a letter from Mr. Charles PEARSON,* relative to the case of the convict *Williams*, who had been ordered for execution at the Old Bailey on Tuesday last, but to whom a *respite* of 14 days was subsequently granted. The particulars of the crime for which he has been sentenced are not fit for public discussion, and therefore we are precluded from making any remarks upon them. Suffice it to say that doubts as to the prisoner's legal guilt of the crime charged in the indictment were suggested upon highly respectable medical testimony, to which we called the attention of the Government, without, of course, entering into any of the details, a day or two before that fixed for the execution of the sentence. * * *

We quite agree with Mr. PEARSON when he says, that—

* Placing Mr. LEESON's (the surgeon's) view of the subject entirely out of the question, it is quite manifest that in proportion as the crime is atrocious, and the punishment awful, so the evidence by which it is to be established ought to be credible and conclusive.'

From this we infer that the worthy Under-Sheriff of

* ' We publish another letter from Mr. LEESON on the subject of the convict *Williams*. We had received the letter of Mr. PEARSON to which he refers, but declined to publish it, because we were unwilling to exhibit an Under-Sheriff in the ungracious position of an advocate for an execution, especially in a case where he himself from his office is, in fact, an auxiliary of the executioner. We agree, however, with Mr. PEARSON, and so does Mr. LEESON, that *Williams* deserves severe punishment for a brutal outrage to female innocence: but the point is, has he committed that crime to which the law affixes the penalty of death? Mr. LEESON is ready to prove that he *has not*: Mr. PEARSON is *not* ready to prove the affirmative. Under these circumstances, the case seems to be one legally requiring a mitigation of the capital sentence; and the prompt humanity with which Lord John RUSSELL attended to the praiseworthy application of Mr. LEESON induces us to believe that the punishment ultimately inflicted will not exceed the guilt actually committed by the prisoner.'—*Times*, June 15, 1835.

London is not, any more than ourselves, of PALEY's opinion, that it is a comfortable thing for a man unjustly condemned, to reflect that he is about to be hanged *for the good of his country*.* To commit *murder* for the sake of example is not exactly consonant with our notions of civilized justice or public morality.

But as to the concluding paragraph of Mr. PEARSON's letter, if we understand it rightly, we certainly cannot give it the same ready assent. He reverts in that paragraph to the medical view of the question, and says,

'If Mr. LEESON's theory be true, the law is a dead letter; and unless it be amended to meet the case which this new light opens to our view, the most fearful results may be expected to follow.'

Now, as Mr. LEESON's view of the case is that the offence is physically impossible, it is both a reasonable and natural conclusion of that view of the case, provided its correctness be established, that the law applicable to it should be inoperative. We do not say whether Mr. LEESON is right or not, nor will we enter into that question at all, which ought to be confined to books of medical jurisprudence; but supposing Mr. LEESON's theory correct, we cannot see why Mr. PEARSON should be astonished at the punishment of death not

* PALEY—(whose name, as an advocate of *expediency*, has been associated with that of PONTIUS PILATE)—in his zeal to uphold the penalty of death, had said, that—'He who falls by a mistaken sentence, may be considered as falling for his country, whilst he suffers under the operation of those rules, by the general effect and tendency of which the welfare of the community is maintained and upheld.' The reply of Sir Samuel ROMILLY, in adverting to PALEY's writings was, that—'Nothing is more easy than thus to philosophize and act the patriot for others, and to arm ourselves with topics of consolation, and reasons for enduring with fortitude the evils to which, not ourselves but others are exposed.' And again, 'When the innocent become the victims of the law, the law is *not merely inefficient*, it does not merely fail of accomplishing its intended object, it *injures* the persons it was meant to protect, it *creates the very evil* it was to cure, and *destroys the security* it was made to preserve.'—ED.

being inflicted for an *impossible* crime. We should be more astonished if it were. A crime that is impossible does *not* require any *example* to *prevent its being committed*. The logic of this position we believe to be incontrovertible, whatever difference of opinion may exist as to the fact.

But there is another point involved in our Correspondent's letter, which we regard in a more serious light. He says,

' My recent experience in the Criminal Courts has unfortunately
' proved that offences nearly approaching to the imputed crime are upon
' the increase; and if Mr. LEESON's opinion gains ground, it is to be
' apprehended that profligate scoundrels may be tempted to speculate
' upon the greatest amount of moral atrocity which may be committed,
' without exposing its perpetrators to the responsibility of legal punish-
' ment.'

If Mr. PEARSON means that *capital* offences of this description have increased of late, that fact is most conclusive evidence to shew that the CAPITAL PUNISHMENT is *not* effective in repressing the crime. If he means that offences *less than* capital have increased, we cannot see what bearing the statement, if correct, has upon the case now under investigation—that ought to be decided upon its own merits; and if Mr. PEARSON thinks the law is not severe enough as it stands, let him procure the assistance of one of the Liberal Members for the City to introduce a Bill into Parliament to create a *new* capital offence, and we shall meet, and, we doubt not, defeat the attempt to increase the black catalogue of capital punishments that belong to our law, which, notwithstanding the ameliorations it has undergone of late years, is still deserving of the bad pre-eminence which Sir Robert PEEL once gave it; for it is still, to use his own words, the most sanguinary law of any in Europe.

We believe our moral feelings are quite as sensitive as those of any advocate for a code of *moral* bloodshed; and if offences were to be punished according to the strict *rules of morality*, there is an offence of a most heinous description, which deserves death *as much* as most crimes on the Statute-

book, and yet it is not visited by our law with *any punishment whatever*. Its moral atrocity no one can doubt—its destruction of the peace and happiness of domestic life no one can deny; but inasmuch as it is not an unfashionable crime with the class of persons *who make* the laws, it is not thought expedient to treat it as a *crime at all*. If our law is to boast of its excessive severity in punishing moral delinquency, let that severity be at least equal and consistent. It would greatly increase the painful duties of the *Under Sheriff* to pass a law punishing with death the violation of the *Seventh Commandment*.

But Mr. PEARSON speaks as if there were no means of protecting innocence without punishing guilt with *death*. We thought that notion, which savours rather of past barbarism than of present civilization, had been exploded. What would he say if informed that there are countries where none, or scarcely any, crime is punished with death, and yet life and innocence and property are better protected than among us? The difficulty of obtaining convictions in this country upon *capital* charges renders punishments which do *not* affect life, *much more efficient* in repressing crime than those that *do*, because under the former the guilty find it far more difficult to escape punishment than under the latter. Public executions have a brutalizing influence upon the multitude, very different from the reformatory effect which punishment ought to have, and which it always has when it *so* chastises the offence as not to shock the natural feelings of mankind.—*Morning Herald, Saturday, June 13, 1835.*

Further Respite of the convict Williams.—Necessity that Penal Statutes be construed strictly.

The further respite of the sentence of death passed upon the convict *Williams* has been communicated to the

public through a circular paragraph sent to the Newspapers in the following words :—

‘ The convict *Thomas Williams*, under sentence of death in ‘ Newgate, who was reprieved for fourteen days, has been respited ‘ during His MAJESTY’S pleasure.’

There is no such thing as a *reprieve* for fourteen days, or for any limited time, a reprieve being tantamount to a pardon, or, at least, to a remission of the capital sentence. The sentence had been *respited*, not reprieved, or, in other words, execution of the sentence had been staid for fourteen days ; and a further respite during His MAJESTY’S pleasure may be considered equivalent to a reprieve, inasmuch as it is not usual to execute the sentence after a limited respite being followed by an indefinite one.

Let us now assure Mr. C. PEARSON, that although he is likely to be relieved in this instance from the painful and disgusting duty of assisting the executioner, yet the convict, if the Crown be satisfied that he has committed the moral part of the offence of which he was convicted, shall not escape punishment. The Crown is quite right, where there is a doubt of *legal* guilt, to forego the extreme legal punishment ; but the exercise of its mercy is at its own discretion, and it can still inflict very severe punishment short of taking the *life* of the offender. The punishment of transportation has, of late, been made very severe. A man who works in an iron gang in a penal settlement has no very pleasurable state of existence ; and we believe that the *living example* of his suffering and ignominious fate is far more likely to have the effect of deterring others from crime than his *execution*—a spectacle which is in its terrors transitory in its effects, brutalizing.*

But whatever the precise degree of this man’s guilt may

* “ *It is not the intenseness of the pain that has the greatest effect on the mind, but its continuance ; for our sensibility is more easily and more powerfully affected by weak but repeated impressions, than by a violent but momentary impulse. * * * * The death of a*

be, the doctrine that death should be inflicted because of *moral* delinquency not amounting to the legal crime—not satisfying the definition of the legal offence—is *new* to the law of England, and we trust, notwithstanding the opinions expressed by the worthy Under Sheriff of London, will ever remain so. To put a human being to death, *not* for doing that which the law prohibits upon pain of death, but for doing *something else*, which, though of great moral turpitude, is *not so punishable by any law*, would be a more atrocious crime than the offence of the culprit, for it would be *murder*. The pretence of justice does not alter the nature of homicide committed *against* law.

It is an established maxim of the law of England, that penal Statutes shall be construed *strictly*. Suppose it were otherwise—and suppose the Statutes of treason, for example, were construed *liberally*. The consequence would be, that under laws made to guard the life of the subject against the vindictive and arbitrary exercise of power, the exploded doctrines of *constructive treason* would, in times of political persecution, be revived, and blood poured out on the scaffold, not to punish the clear violation of a precise and definite law, but to take vengeance for some moral or political delinquency which did not come within the law of treason at all. The revolutionary tribunals of France were the most *liberal* interpreters of capital laws that ever existed, with the exception of the Judges of our own despotic tribunals in the worst days of the STUARTS, and with the exception of the titled and judicial tools of the “King of

criminal is a terrible but momentary spectacle, and therefore a less efficacious method of deterring others, than the continual example of a man deprived of his liberty, condemned as a beast of burthen, to repair by his labour the injury he has done to society. *If I commit such a crime*, says the spectator to himself, *I shall be reduced to that miserable condition for the rest of my life*; a much more powerful preventive than the fear of death, which men always behold in distant obscurity.”—*Marquis Beccaria*.

the Barricades," in the abominable mockery of justice called the *procès-monstre*. In England we cannot by law, and ought not to in practice, know any thing of strained constructions of penal Statutes against the liberty or the life of the subject.

We have thus gone far beyond the particular case which called for these remarks, to shew to what lengths the doctrine of moral responsibility involving penal consequences, may be carried in favour of a capricious and tyrannical perversion of justice, whenever the administration of justice ceases to be governed by an implicit veneration for the certain and precise provisions of positive law. —*Morning Herald, Friday, June 26, 1835.*

AMERICAN "LYNCH LAW" Murders—in support of Slavery.

Let those who have been taught to regard a "*pure democracy*" as a mode of Government infinitely preferable to that of the mixed Constitution of England, only look to the manner in which the democratic spirit works in the States of North America.

It is not long since the American Journals gave us abundant accounts of club-law, in all the savage vigour of that ancient democratic usage, being called in to regulate "Freedom of election,"—ay, and that too with the balloting urns on the hustings—those infallible preservatives of all that is pure and independent in the exercise of the elective franchise! Now we see how the *administration of justice* improves in the same country, where tyrant-mobs undertake both to make the laws and put them in force, being at the same moment Legislators, Judges, Witnesses, and Executioners!

The apologists, if there be any such, for the horrible and systematic murders of the American mobs, will probably tell us that their love of *justice* is so great that they cannot brook the delay of the ordinary forms of law, and

so they execute criminals, or alleged criminals, without trial. Sometimes, too, they seize and put to death, or to torture, persons who have been tried and *acquitted* in due form of law, two instances of which recently occurred ; in the one case the acquitted person was carried off by the mob, and actually burnt alive—in the other the acquitted person was flogged until he begged it as an act of mercy to be put to death.

This mode of administering justice is called "LYNCH'S LAW," and seems likely, as things go in America, to supersede all other law. It has the recommendation of being a law in which there is nothing of the "law's delay"—of being also "cheap law," for the Judges administer it without a salary, and even the Executioner operates without a fee. It is also a law that saves the trouble of deliberation, and excludes all the perplexity which ensues to conscientious Juries on hearing both sides of the case. It is true that the innocent who happen to be unjustly accused are as likely to suffer its penalties as the guilty ; but then, as the French democrats of the first Revolution justified their systematic murders on the plea of being committed in the cause of Liberty, why may not the American democrats justify their murders on the ground of being committed in the name of Justice ?

An Evening Contemporary (the *Courier*) of last night says, in speaking of the contents of the New York Papers—

' Another important circumstance in those Papers is the rapid extension of LYNCH'S LAW in the United States. Several instances of that have lately been noticed, but the present is the most horrible we have yet met with. From our extracts it will be seen that no less than five persons were hanged by the Lynch executioners at Vicksburg, on no better ground, apparently, than that they were gamblers. A quarrel ensued, says an account, at a dinner table ; one of the citizens had a degrading punishment inflicted on him, and the populace assembled to expel all the gamblers from the place, and destroy their apparatus—the gamblers armed for their own protection—an assault took place, and one of the citizens was killed—in the

‘exasperation of the moment, five persons were seized on and hanged, without even the form of a trial. Thus one violence led to another—a hatred of vice and angry words led to wholesale murder.’

Now we can hardly think it was a hatred of vice that led to the attack upon the gamblers, if it be true, as one account states, that the citizen who was killed in the affray was himself a gambler, who having gone into the gambling-house with the intention of winning other people’s money, lost his own. *Love of cruelty*, rather than hatred of vice, is the stimulating motive in general to mob-justice—the most hardened ruffians make the best executioners.

But inhuman and revolting as was the summary execution of the tavern-keeper, his waiter, and three persons found on his premises at Vicksburg, we do not agree with the *Courier* that it is the most horrible instance of the putting in force the “LYNCH LAW” that we have yet met with. The cold-blooded massacre related in the *New Orleans American*, of July 13 last, is, in our opinion, infinitely worse. Here is the account in the words of that Journal, the writer of which seems rather to approve than reprobate the crime:—

‘A letter was received here on Saturday, from Livingston, Mississippi, stating that two itinerant abolition preachers had been seized by the inhabitants, who, after receiving proof that the wretches had endeavoured to create a revolt among the negroes, and after hearing their defence, caused them to be hanged in the streets, together with seven negroes who had listened to their doctrines. Warning is given to the abolitionists that they may expect similar treatment all over the South.’

Here we have another instance of the extraordinary love of justice that actuates an American mob-tribunal in executing the last sentence of the law. They hanged the abolition preachers because they *had proof* that they *intended* to create a revolt—no revolt having, in fact, taken place; and they hanged the seven negroes—for *revolting*? No:—For *intending* to revolt? No:—for what, then? For the crime of having *listened* to the abolition preachers! It

appears that they did not stop their ears with cotton when the itinerant preachers preached against Slavery. On the contrary, not having the fear of the sovereign people before their eyes, and being moved and instigated by the love of freedom, they maliciously, feloniously, and of their malice aforethought *listened*; and listening to an abolition preacher by a slave being a capital crime in free and republican America, the listening slaves were *hanged*. Whether the American democrats have by this application of "LYNCH'S LAW" evinced a greater love for Justice or for Freedom, we are at a loss to determine.

Is this the land of WASHINGTON and FRANKLIN?—the land of liberty, *par excellence*, where "Freemen" drag off slaves to the gallows, and hang them up for listening to doctrines that militate against the most odious and degrading slavery that ever contaminated civilized society? Is this the land of pure and immaculate Republicanism, where for a Helot not to be delighted with his chains is a *capital crime*, and deserving of instant extermination? And such is the doom proclaimed against all who preach the Abolition of Slavery in the South, and of every slave who listens to them! Every one who dares to read the Gospel to the slaves must fall under this sentence of the mob-inquisition of America!

We turn with disgust from the heart-sickening picture of democratic baseness and tyranny which is here presented to our view. But the more we look to what has been and what is done in "fierce democracies," the more reason shall we find to admire and venerate *the mixed Constitution under which have grown up and flourished the enlightened and regulated liberties of ENGLAND.**—*Morning Herald, Tuesday, August 25, 1835.*

* [The *Morning Herald*, in directing public attention to the evils of an absolute democracy—in the instance of AMERICA, where the ABUSE OF POWER, is sometimes without a curb—was but upholding the same great Constitutional principles it espoused at

AMERICAN "LYNCH LAW" *continued.*—*The Tribunals of JUSTICE superseded by popular and lawless VENGEANCE.*

At the farewell dinner given at Washington to the British Representative, Sir Charles VAUGHAN, we observe that

various times when denouncing tyranny under *other* forms, and thereby demonstrating, by practical illustration, the invaluable privileges secured by the British Constitution. Many of its able Articles we find have this tendency. One we insert:—(ED.)]

The execution of the patriot MENOTTI has cut off one of the firmest friends to the independence of his country which degenerate Italy possessed; but his martyrdom to the cause of Liberty will be among the recollections that will yet add strength to the cause for which he died.* The tyrant of MODENA, who provoked the people to

* *Extract of a Letter dated MODENA, May 27, 1831.*—"I yesterday beheld my two unfortunate friends suspended from the gallows. Every one expected that MENOTTI would be *condemned*; but it was thought his sentence would have been *commuted*. No great reliance was to be placed in the humanity of the DUKE; but it was imagined that such horrors could not be perpetrated in our age, and that the DESPOT, casting a view towards the future, might deem it prudent to forgive. As for BORELLI, it is not known on what grounds he was condemned; his large property, and the avarice of the DUKE, can alone account for his sentence.—Yesterday, at three o'clock in the morning, my servant came to inform me that one of the prisoners had found means to speak to me in secret, and that he wished to see me that moment. I was much surprised at this message; but what was my horror when one of the executioner's assistants entered my room, to tell me that MENOTTI and BORELLI were about to be hanged, and that the former desired, as a last proof of my friendship, that I would be present at his execution, to receive his last words, and to bear testimony to his having died faithful to the cause of Italian liberty. I rose, and, trembling with terror, proceeded to the ramparts of the citadel. The sun was already shining on the gallows that had been secretly erected during the night; a few country people and artisans who were repairing to their daily labours, had stopped to look upon those sad preparations; no one uttered a word. Shortly after, a rumour arose; it announced the approach of the mournful procession. I heard a man next me whisper MENOTTI's name—I looked around and perceived him—he recognized me. I could not take my eyes off MENOTTI. What a serenity in his countenance! How dignified was his demeanour! He ascended the scaffold, cast a look on the assistants, and, turning towards me, spoke in a strong and firm voice the following words, which were his last:—"The cause of TYRANNY has no other support than that afforded by executioners and gibbets: the cause of FREEDOM has on its side the force of opinion and the

one of the toasts was "The field-sports of England and America—like our common language—may they ever remind us of our relationship." Now, one of the prevailing field-

resistance—who fled from their just demands for a reformed Government, and returned under the protection of Austrian arms to celebrate his cowardly triumph with sanguinary rites, cannot efface with the blood of MENOTTI the remembrance of the virtue which sustained him in his dying hour. That remembrance will one day have for his countrymen all the force of an inspiring example. The tyrant can crush life, but he cannot by the axe and gibbet extinguish the high and holy sentiment under the influence of which brave men lay down existence at the sacred call of their country. That sentiment increases in strength with the sacrifices made to it. Its moral power grows, in whatever soil it once takes root, only the more vigorously for every effort made to extirpate it by savage force. POLAND is a memorable instance, where all the blood which Muscovite tyrants had shed from the first partition, nearly sixty years ago, up to last November, instead of strengthening their dominion by connecting it with examples of terror, has only excited a deeper resentment for wrongs endured—made the fearless sacrifice of life familiar—and rendered a heroic resistance to the Oppressor the universal virtue of the people.

How truly and how touchingly did MENOTTI say in his last moments, when he viewed the apparatus of death with that undimmed serenity which disappoints a tyrant of the sweetest portion of his revenge—

'The cause of *tyranny* has no other support than that
'afforded by executioners and gibbets. The cause of *freedom*
'has on its side the force of opinion and the union of sentiments.
'The success of the latter does not depend on the fate of indi-
'viduals. I have done my duty, and free from remorse I descend
'into the grave.'

This man was worthy a nobler people than the Italian race of the present day, who crawl, the slaves of foreign dominion, amid the

"union of sentiments. The success of the latter does not depend on the fate
"of individuals. I have done my duty, and I descend into the grave free
"from remorse. I expected FRANCE would have interfered; perhaps it is
"better that she did not. My death will teach the Italians to detest foreign
"intervention; they must place their sole confidence in the strength of their
"own arms." MENOTTI spoke no more, and I rushed from the scene horror-
'stricken.'—*Morning Herald*.

sports of America being the hunting down, tarring and feathering, torturing and hanging every *animal rationale*, *bipes et implume*—*Anglicè*, MAN—who dares to object to a terrible and grinding system of Slavery in the land of republican freedom, inalienable rights and all that, we hope that the Americans will keep all the glory as well as the gratification of that pastime to themselves. It will, no doubt, make an interesting and prominent article in the next volume of the "Wild Sports of the West."

Do not the Americans know that inasmuch as we have no slaves in England—except metaphoric ones—that as we do not buy the bones and sinews of living men, and brand their bodies with their owners' names, and sell them like

magnificent ruins of the glory of their land, and *burrow* in the grave of the Empire which their ancestors created. His sentiments shewed that he, at least, had not looked around among his contemporaries for the maxims of life. He had imbibed the spirit of the ancient school of Roman virtue. The vindictive exercise of POWER gave him the opportunity to display it. Had his enemy been less of a tyrant, MENOTTI might have appeared less of a patriot. The spirit of vengeance that destroyed his life has immortalized his memory. Though he failed to achieve the freedom of his country, he has left a name, which, along with that of his distinguished friend BORELLI, who perished along with him, will be inscribed in those records of the illustrious dead which exercise the most virtuous influence on the hearts of the living.

Nor should his last advice be neglected by his countrymen:—

'I expected France would have interfered: perhaps it is better that she did not. My death will teach the Italians to detest foreign intervention; they must place their sole confidence in the strength of their own arms.'

There is no doubt that the Italian patriots relied too much upon the pompous declaration of the French Government that they would not allow any foreign intervention in the internal affairs of other States. They were cruelly undeceived by the pusillanimous conduct of that Government when the Austrian armies put its sincerity to the test. Let them now learn that a country that would be free must be her own deliverer.—*Morning Herald, Thursday, June 16, 1831.*

sheep or swine, or put collars on them like dogs, we have no such opportunity of pursuing that favourite sport of hunting "runaway slaves" as they have, or letting loose the Lynch blood-hounds for a grand *battue* upon the defenceless individuals who implore, in the sacred name of Liberty—appealing, at the same time, to the mercy-teaching volume of the God of Christians—that the foul reproach of slavery may be taken away from the land, and that the "inalienable rights" of the black man may be restored to him?

No; happily the field-sports of monarchical England are not altogether the same as those of republican America. We have long since got rid of the stain of the slave trade, and slavery itself will, in a few years, be effaced in reality as well as in name, from our distant colonies. In this country, though having a KING and an Aristocracy, the COMMON LAW had for ages denounced that abominable slavery, which dares to make the person of a man a marketable property, in language which the generous inspiration of poetry could not improve when it exclaimed—

"Slaves cannot breathe in England—if their lungs

"Receive our air, that moment they are free—

"They touch our country, and their shackles fall."

When will anti-monarchical and anti-aristocratical America be able to make the proud boast, which is the language of the law of England, "that the slave that breathes her air—that but places his foot upon her soil, becomes that moment free?" Yet, until she is able to make that boast with truth, let not America pretend to a pure love of Freedom, or talk of the "inalienable rights of man."

But leaving Slavery out of the question, and the abominable outrages of humanity and morals which attend it in America, let us look at the manner in which the democratic principle is working there with regard to that important branch of government, *the administration of justice*.

We have on former occasions—and it shews that we

take no prejudiced view of American affairs—adverted to the criminal codes of several of the States of the Union, and given them credit for breathing a milder and more rational spirit of criminal jurisprudence than our own. In our own efforts, during several years, to procure a reform of our criminal laws, we have frequently endeavoured to shame the indolence of our own Legislators, by shewing what progress some wise and good men, in several of the American States, had made towards a complete purification of their laws from the spirit of cruelty, revenge, and barbarism. The small number of crimes to which the punishment of death is affixed, compared with our own, proved that there was some guiding intelligence in each of those State Legislatures that taught them to understand the spirit of criminal jurisprudence better than it was understood, until very lately, at least, by the British Parliament. Now this is great praise to give to America. We give it freely, because it is only an act of justice and an admission of the truth.

But a darker picture presents itself to our view—it is more like a horrible vision than a reality—we wish we could blot it from the page of human history and from our memory for ever. A monster, with many heads and a thousand hands, has broken the tables of mild and rational laws, and substituted in their stead a law of violence, of torture, and of blood ;—that monster is a WILD DEMOCRACY—the same that fed the *guillotine* of *Robespierre* with innumerable victims, and made the white robes of Gallic Liberty red with innocent blood—that law is what the ruffian bands, who rejoice in being its executioners, jocularly call the “LYCEN LAW.” Under that “law” mercy has no place, innocence no protection ; the *forms* as well as the *substance* of justice are trampled in the dust. Revenge and cruelty torture and destroy the victims of popular hatred or suspicion, and those whom the solemn verdict of a Jury acquits before the regular tribunals, are dragged from beneath the powerless arm of the Constitution to be exterminated, amid the savage shouts

of the organized assassins, who administer this species of DEMOCRATIC JUSTICE.

The American Government would, no doubt, wish to put down these terrific exhibitions of mob-justice, and restore the wholesome authority of the deposed laws; but the Constitution of America, unlike the British Constitution, *has not the means* of effectually keeping the excesses of the democratic principle in check. The late disorders seem completely to have paralyzed it. Instead of taking instant measures to suppress the Lynch Clubs, and bring the organized murderers to trial, the Government allows them to spread over the country—allows them to go on in the work of assassination, regardless whether their victims be slaves, free men of colour, or white men denounced by private malice or popular hatred, and doomed to death by remorseless savages, who concentrate in themselves the offices of Prosecutor, Judge, Witnesses, and Executioner!

In England, as long as we are permitted to possess our mixed Constitution—as long as a KING and a HOUSE OF LORDS exist *independent of the popular power in action*, and yet *identified with it in interest*, the popular force will never be able to trample upon the laws, and usurp the functions of Government, as it has done in America. Acts of popular violence and public disturbance do, indeed, occasionally occur in this country, but they are soon suppressed.—But such monstrous things are never heard of as organized popular bodies usurping the fasces and the axe—sitting in irresponsible authority on the lives of men, and consigning to a dreadful death all who are thought fit objects of their vengeance.

If, indeed, the *Political Unions*, with which the country was threatened during the excitement of the Reform Bill, had succeeded in establishing themselves in force in this country, the balance of the Constitution would have been destroyed by the democratic power. We should have had irresponsible popular bodies—organized bodies wholly un-

known to the Constitution, usurping both legislative and executive functions, sitting in permanent convention to controul King, Lords, and Commons, and no doubt in time, like the Lynch Clubs of America, superseding the authority of the KING's Judges, dispensing with the slow formalities of justice, and unceremoniously hanging up all whom the popular voice denounced, as the rebel KERR did some centuries ago, upon the "oak of reformation."

During the very *mania* for Political Unions, though strenuously supporting the cause of reform, we as strenuously opposed the formation of those democratical and irresponsible clubs, whose object was to make the Government of this great empire a matter not of reason and judgment and knowledge, but of popular passion, popular intimidation, and physical force. From what we see now passing in America, where organized clubs set the Government at defiance, and employ their brute force for bloody purposes without restraint, we are the more satisfied with the part we then took in preventing such a derangement of the balance of our Constitution as would have left the country at the mercy of an ABSOLUTE DEMOCRACY.—*Morning Herald*, Wednesday, October 28, 1835.

Remarks defending the observations which had been made on the Case of a person convicted and sentenced in Dublin.

Why should it surprise the Ministerial Papers that we have recommended a mitigation of the sentence in the case of *Reynolds*, the Dublin Agitator? Is it a novel thing that the *Morning Herald* should advocate a firm, but at the same time a mild and merciful administration of the law? Have we not, without regard to politics or party, struggled for many years to drive every thing like passion and vindictive feeling out of the sanctuary of Justice, and to make both Legislators and Judges understand the wisdom of that beautiful maxim of the enlightened BECCARIA, that "it is

not the severity, but the certainty of punishment that deters from crime?"

Often, when imploring a revision of the sentence of the poor and friendless prisoner* condemned to death upon insufficient evidence, or when endeavouring to obtain a mitigation of punishment which we thought too severe for the crime, has one or other of those Journals that rejoiced in the patronage of the Whig Government bitterly assailed us, as if the attempt to render justice mild and considerate were a crime; often have those Journals supplied the lack of argument by taunts and sneers, as if questions involving the life or death of human beings were best disposed of by those sorry jests which prove that the sports of dulness may be inhuman, and that the poet did not inaptly join "a brain of feathers with a heart of lead."

But have we ever, in advocating the cause of the poor man, whether unjustly condemned or too severely punished, imputed unworthy or corrupt motives to Judges and Juries? We have said much indeed about the *fallibility* of human tribunals, and the consequent caution which ought to be exercised both in the making and the administration of penal laws, lest errors might be committed that could never be retrieved. Impugning some decisions of Courts of Justice, as we have done, we have always been ready to testify to the uprightness and purity of character which distinguish the Judges of the land—to the fairness, the patience, and impartiality with which they usually try prisoners, and to the dispassionate temper which they evince in cases about which the popular passions are so excited as to condemn the accused unheard; yet neither Judges nor Juries are infallible—consequently, under the wisest and best system of criminal jurisprudence and criminal judicature, erroneous decisions will sometimes occur; and our system is not yet the best. * * * * Under these circumstances,

* See cases of *Charlotte Long*, *George Wren*, &c., *ante*, pp. 42, 130, 158, 255.

we have no hesitation in joining that part of the Press which interests itself on behalf of *Reynolds*, so far as to pray for some mitigation of his sentence.—*Morning Herald, Thursday, November 5, 1835.*

Allusion to the Works circulated by the SOCIETY for diffusing INFORMATION on the subject of CAPITAL PUNISHMENTS.

An advertisement* appears in our columns of to-day from the Committee of the SOCIETY for diffusing Information on *Capital Punishments*, containing a list of some of the works which that Society have, from time to time, circulated in a cheap form, for the purpose of enlightening the public mind on the subject of criminal jurisprudence. The interest

* CRIMINAL JURISPRUDENCE.

1. The Punishment of Death proved to be unlawful, in a Letter to the Marquis of Northampton, December 29, 1834. By John PELL. Second edition.—Hamilton, Adams, & Co., Paternoster-row.

2. The Inexpediency of Capital Punishment. A Paper read before the Literary and Philosophical Society of Newcastle, October 7, 1834. By Robert R. DEES.—Newcastle: Finlay & Charlton.

3. Speech of the Right Hon. Sir William MEREDITH, Bart., in the House of Commons, in the year 1777, against a Bill creating a new capital felony. Fifth edition.—Darton & Harvey, Gracechurch-street.

4. Speeches of Earl GREY and Lord GRENVILLE, in the House of Lords, April 2, 1813, against the Punishment of Death. Second edition.

5. Public Meeting at Exeter Hall, Strand, May 30, 1831.—Substance of the Speeches of Stephen LUSHINGTON, LL. D., M.P., and J. Sydney TAYLOR, A. M., in discussing the Resolution relative to the Punishment of Death. Second edition.

6. A Comparative View of the Punishments annexed to Crime in the United States of America and in England. By J. Sydney TAYLOR, A. M., of the Middle Temple, Barrister-at-law. Third edition.

7. The London Jurors' Petition against the Punishment of Death, presented to the House of Lords, September 6, 1831, by the DUKE OF SUSSEX, together with Extracts from the Speech of His Royal Highness, and Observations made on that occasion by the Public Press.

which the community has in the dissemination of correct ideas upon this important subject must be manifest to all who recollect, that, in a free country like this, the laws in general take their tone very much from that of public opinion. If the public have erroneous impressions upon the subject of penal justice, it is very likely that the Legislature will do wrong; and it should never be forgotten that the errors of the Legislature in dealing with crime must lead to calamitous consequences, both as affecting the liberty and life of the subject, and the moral welfare of society.

That the British Legislature had for a long series of years proceeded upon a vicious and ignorant principle in accumulating punishments of excessive severity on the Statute-book,

8. *Anti-Draco; or Reasons for abolishing the Punishment of Death in Cases of Forgery.* By J. Sydney TAYLOR, A. M., of the Middle Temple, Barrister-at-law. Second edit.—Ridgway, Piccadilly.

9. *Report of Proceedings at a Public Meeting on the Forgery Laws, held in Dublin, the Right Hon. the LORD MAYOR in the Chair, March 9, 1831.* Third edition.—Dublin: Curry & Co.

10. *Reflections concerning the Inexpediency and Unchristian Character of Capital Punishments as prescribed by the Criminal Laws of England.* By Samuel WIX, M. A., F. R. S., Vicar of St. Bartholomew-the-Less.—London: Rivingtons, St. Paul's Churchyard.

11. *On the Punishment of Death.* By Thomas WRIGHTSON. Second edition.—Hearne, 81, Strand. This work contains important Statistical Tables, founded on Parliamentary Returns for 21 years.

12. *Objections to the Punishment of Death concisely stated.* Third edition.—Darton & Harvey, Gracechurch-street.

13. *The History and Results of the present Capital Punishments in England; to which are added full Tables of Convictions, Executions, &c.* By Humphry W. WOOLRYCH, of the Inner Temple, Barrister-at-law.—Saunders & Benning, Fleet-street.

14. *The Opinions of different Authors upon the Punishment of Death, selected by Basil MONTAGU, Esq. of Lincoln's Inn.* Second edition.—Longman & Co. This work is nearly out of print.

15. *Origin and Outline of the Penitentiary System in the United States of North America.* Translated and abridged from the French Official Report of Messrs. G. de BEAUMONT and A. de TOCQUEVILLE.

and making the laws breathe a vindictive and exterminating, instead of a corrective and reforming, spirit, is a truth now pretty generally acknowledged—a truth which was not, indeed, so generally acknowledged some time ago, but which the publications of the Society in question, and our own humble exertions, have had some effect in impressing upon the public mind. The light which public opinion derived from the Press has been reflected upon the Legislature. The result is seen in several important reforms which have taken place in the criminal law, diminishing that black catalogue of crimes punishable with death, which, to use the

By W. B. Sarsfield TAYLOR, Hon. Sec. to the Society for diffusing Information on the Punishment of Death.—Arch, Cornhill.

16. Substance of the Speech of T. Fowell BUXTON, Esq. M.P., in the House of Commons, March 2, 1819, on the Motion of Sir James MACKINTOSH, "That a Select Committee be appointed, to consider so much of the Criminal Laws as relates to Capital Punishments or Felonies, and to report their observations and opinions of the same, from time to time, to the House."—Arch, Cornhill.

17. Report of the Proceedings at a Public Meeting convened at the Town Hall, Brighton, December 5, 1832, to petition the Legislature for a further Mitigation of the Penal Laws. Third edition, with Remarks on the Expediency of Mitigation.—Arch, Cornhill.

18. Debate in Parliament upon Sir James MACKINTOSH'S Motion for abolishing the Punishment of Death in certain cases of Forgery, Monday, June 7, 1830.

19. Report of the Proceedings at a Public Meeting convened by the MAYOR, at the Town Hall, Southampton, on Monday, March 8, 1830, to petition Parliament on commuting the Punishment of Death. Second edition.—Simpkin & Marshall, Stationers'-court.

20. Introductory Report to the Code of Prison Discipline, explanatory of the Principles on which the Code is founded, being part of the System of Penal Law prepared (in the year 1827) for the State of Louisiana. By Edward LIVINGSTON.—Millar, Henrietta-street. Covent-garden. The punishment of TH is not admitted into this Code.

[The immense circulation which some of these works, or extracts from them, have silently obtained, renders remark superfluous. It shews the existence of a moral force which must prove triumphant in the issue of this question. Of our pamphlet alone upwards of one hundred thousand copies have been printed.—Ed.]

words of Judge BLACKSTONE, prove a manifest defect, either in the wisdom of the Legislature or the strength of the Executive power. "It is," says the same enlightened commentator upon the laws, "a kind of quackery in Government, and argues a want of solid skill to apply the same universal remedy—the *ultimum supplicium*—to every case of difficulty." Ignorant and cruel as this species of legislative quackery is, the British Parliament practised it to an extent which it is impossible to reconcile with the wisdom in political legislation which was displayed in this country in very early ages, and which the most enlightened men of other countries have admired in the beautiful construction of that mixed Constitution which stands proudly unrivalled and alone in the world.

Much has been done within a few years in reforming the criminal laws, but much yet remains to be done, before it will be altogether such as reason can approve and civilization demands. There are still too many capital offences on the Statute-book, and the brutalizing spectacles of the scaffold are but too often presented to the familiar gaze of the populace. There are executions for some crimes, indeed, which, besides barbarizing the feelings, pollute the mind. For the repression of *such* crimes, the darkness and silence of a prison would be far more effective than that publicity of punishment on the scaffold, which has, we believe, no other effect than to multiply the offence. It may well be a reproach to England, with her free institutions, to know that in some despotic States, as in Austria and Prussia, for instance, executions are far more rare than in this country.—*Morning Herald*, Tuesday, November 17, 1835.

Amazing disparity in the Capital Punishments of PRUSSIA, under an absolute regn and those of ENGLAND, under a constitutional Government.

From an intelligent gentleman who has recently travelled in Prussia, and who takes a strong interest in the reform

of our criminal code, we have learned that the Prussian SOVEREIGN, though an absolute Monarch, has a strong aversion to capital punishments, and is bringing about the abolition of those cruel and useless exhibitions by a *practical* amelioration of the law. The crime of *murder* is the only one now punished with *death* in Prussia. Would we could say so of England!

To shew the gradual amelioration of the law as to executions even for murder, and along with it the gradual *diminution* of the crime itself, let us take a period of 15 years ending with last year, and divide it into periods of five years each. It will be found that, in the *first* period of five years, the total number of executions in PRUSSIA was 54, and the convictions for murder 69. In the *second* period the number of executions was 33, and the convictions for murder, 50. In the *third* period the executions were only 19,* and the convictions for murder diminished to 43. We shewed on a former occasion that the gradual diminution of capital punishments in BELGIUM, and their practical abolition during the last five years, have been attended also with a remarkable *reduction* in the amount of crime:† so unnecessary are capital punishments proved to be for the protection of society. Unnecessary, did we say?—they are worse than useless; for where they are most prevalent, crime most abounds. Why is it that the despotic Government of Prussia is more tender of shedding the blood of its subjects than the Constitutional Government of free and enlightened England?

Now, let us take for ENGLAND (and Wales) 21 years‡

* But in each of the years 1832, 1833, 1834, *only two* suffered the penalty of death in all PRUSSIA! The convictions for *murder*, also, at the same time fell still lower, namely to 22, or $7\frac{1}{3}$ *per ann.* In the *first-mentioned* period (of five years) the convictions for murder had averaged nearly 14 *per ann.*—ED.

† *Ante*, p. 258.

‡ Parliamentary Paper, printed in 1835, No. 217, p. 17.

ending with last year, and divided into periods of seven years each—we are obliged to take those periods instead of five years, because they are the periods fixed upon in the Parliamentary Returns—what are the results? In the *first* seven years we find that the number of executions for various offences was 649, there being 141 convicted of murder. In the *second* period the executions were 494, the convictions for murder being diminished to 113. In the *third* period the executions were reduced to 355, the convictions for murder being diminished to 105. Thus we see that in this country a reduction in the number of capital punishments has been attended with a *diminution* in the number of the worst class of offences.

But, does it not reflect deep disgrace on the rulers of the English nation that the enforcement of the laws which are intended to repress crime should be so sanguinary compared with the practical application of the laws in Prussia? To shew the relative disproportion of extreme punishment in the two countries more clearly, let us take a glance at the relative population of both. The population of Prussia, according to the official census of 1826, was about 12 $\frac{1}{4}$ millions. The population of England and Wales, according to the census of 1831, was upwards of 13 $\frac{3}{4}$ millions. Therefore, in 1826 the population of the two kingdoms must have been not widely different. But what an awful disproportion between the amount of human life in the one and the other kingdom annually cut off from society by the sword of the law! The Prussian Government looks more to the *reformation* of offenders; while our own rulers are but too much disposed to believe, in spite of all experience, that the great efficacy of criminal law is in its *exterminating* examples!

When we speak of the Rulers of England in connection with the severe enforcement of vindictive law, let us do justice to the SUPREME MAGISTRATE, and separate the character and feelings of our august SOVEREIGN from

those of his constitutional advisers. We know that GEORGE THE FOURTH was exceedingly averse to executions. We have, upon the best authority, the fact which we formerly mentioned of his anxiety to save the life of a subject against the opinion of the Members of his Council, and his frequently endeavouring, by earnest and protracted argument, when the RECORDER of London's report was under consideration, to induce them to change their minds, and to prevail upon them rather to advise mercy than sacrifice; for, as the King of ENGLAND is not an absolute Monarch like the King of PRUSSIA, the public must be aware that it is unconstitutional for him to extend the mercy of the Crown to a criminal unless in conformity with the advice of his responsible Ministers. We also know that to sanction the execution of a subject costs his present MAJESTY a great struggle and great pain; not only that, but he is accustomed to urge every point that can strike a considerate and humane mind in favour of the prisoner whose case is under consideration. It is greatly owing to HIS MAJESTY'S own merciful anxiety to save the lives of his subjects, that the extraordinary and unprecedented circumstance has occurred that, during a period of *two years and a half*, there has been no execution in the Metropolis of this empire, under a jurisdiction which, extending over the City, and the county of Middlesex, embraces nearly one million and a half of people.* Where, then, is the necessity for the great number of executions that annually take place in other parts of England?

Two criminals are now ordered for execution in the county of Surrey.† Their crime and the remembrance of it ought to be buried in the silence and seclusion of the prison-

* The last execution for London and Middlesex having taken place April 23, 1833.

† The execution here alluded to, took place three days afterward, being removed to the *Old Bailey*, in the heart of the Metropolis; *

house. The attracting the curiosity and attention of young and old to the offence by the public spectacle does great mischief to public morals. It pollutes the imagination and tends to disseminate the depravity. There is a place *set wholly apart* for such culprits in the House of Correction, Cold-bath-fields, where they cannot associate with others, and where judicious coercion, moral discipline, and *seclusion*, produce their due effects upon the wretched offenders. This prison, we have reason to believe, is under excellent management. At all events, if its moral discipline should fail to correct such offenders, its walls and bars can prevent society from ever being contaminated by their presence. There are crimes which, it is better for society, should be covered with the oblivion of the solitary cell, than dragged under circumstances of horrible interest into the light of day. Copies of reports of such executions are hawked about the streets and villages—disgusting details are given to gratify a vicious curiosity—and thus the exterminating severity of the law is made instrumental to polluting the morals of the people.—*Morning Herald, Tuesday, November 24, 1835.*

*Remarks upon the intended execution, ordered by the
PRIVY COUNCIL.*

Since we wrote upon the subject mentioned below we have received the following communication :

‘ APPROACHING EXECUTION.

‘ Sir,

‘ Nothing can be more just and appropriate than
‘ your remarks of this morning ; and if you will take the trouble
‘ to turn to page 19 of the same Parliamentary returns you quote,
‘ you will there find that for SEVEN YEARS past there has been
‘ no execution of the kind ordered upon the RECORDER’s Report.

circumstance the more to be regretted, because of the increased publicity it thereby obtained. We would fain have passed it unnoticed ; but there is a danger of recurrence, until the present penalty is altered by law. Is there not any Member of Parliament of sufficient moral courage to undertake the task of bringing in a Bill ?

‘ Is it the object of the Whig ADVISERS of His Majesty to corrupt
 ‘ the public morals in reviving such an abominable spectacle ?

‘ Your humble servant,
 ‘ Tuesday, Nov. 24.’

‘ CIVIL.’

The reference which the writer of this communication makes to the Parliamentary returns is perfectly accurate. It is true that until the disgusting and pernicious spectacle which it has pleased our Whig rulers to exhibit to the people—we believe on Friday (to-morrow) morning—there was no execution of the sort ordered upon the RECORDER’S Report for the space of seven long years. We thank our Correspondent for directing our attention to this important fact, as stated upon the Parliamentary returns. It will be seen from this that the Whig advisers of the Crown are not pursuing a system that has been hitherto invariably pursued, but are returning to a practice which had been interrupted, and, interrupted—we presume it had been found worse than useless—because it had been proved to be offensive to public decency, and highly injurious to the morals of the people.

Before leaving this subject we cannot avoid taking a brief notice of some remarks which appeared in the *Courier* relative to our observations upon such executions the other day. Those remarks of the *Courier* were, on the whole, rather complimentary ; but upon one material point our Contemporary seems to have fallen into a great mistake respecting our sentiments. We never intended to advocate *secret executions*. We thought we had sufficiently guarded ourselves against being supposed to do so, although the nature of the subject we were discussing made it necessary to adopt a mode of expression not the most clear or explicit. Secret executions are rather characteristic of a tyranny than of a state with free institutions. Besides, executions are not for a vindictive purpose, or should not be, but are solely for *example*. If the examples be either useless or pernicious, they should be abandoned ; but secret executions

cannot be for example. Coercion from crime can be effected as well by the deprivation of liberty as by the deprivation of life. We recommended the *restraint and seclusion of a prison*—not that the executioner should do his disgusting work within the walls instead of without.—*Morning Herald, Thursday, November 26, 1835.*

The same subject continued.

Our Contemporary of the *Courier*, in undertaking to correct our statistics, has proved himself somewhat inaccurate in his own. The numbers which he gives of convictions and executions are, for England and Wales, *including London and Middlesex*, as may be learned from a parenthesis in the title-page of the Parliamentary Paper, which says that the latter “are *extracted from* the foregoing statements.” He should, therefore, have said 12 executed out of 25 convicted, and 31 out of 55, instead of 12 out of 28, and 39 out of 67, when speaking of *other* counties than London and Middlesex.

Instead of stating the subject, as we did yesterday, we might have gone still farther back through the annual Tables, as we have done to-day, and shewn that the Privy Council has not ordered such an execution for a period of *thirteen years*—a fact, of which a correspondent of the *Courier* yesterday informed the public. Where, then, was the necessity for the Government obtruding this disgusting and demoralizing exhibition on the public?

Our Contemporary recently admitted that the exhibiting such spectacles to the people must tend to increase depravity rather than to check it. He now admits, or rather proves, by reference to Parliamentary documents, that the absence of such executions has not been productive of evil consequences to society. He shews that three offenders were convicted in two out of the seven years; that their punishment was not that of death, but was such as we have

recommended in the *Morning Herald*; and yet there were five years out of the seven, in which no such crime disgraced the annals of the Criminal Courts of the metropolis. Again, we ask what does our Whig Government propose to itself—what advantage does it contemplate to public decency, or public morals, by reviving such offensive and revolting spectacles?—*Morning Herald, Friday, November 27, 1836.*

Revolting executions in PARIS, contrary to King LOUIS PHILIP's former declaration against Capital Punishments.

Some Paris Journals have been lately entertaining such of their readers as have a morbid appetite for the horrible with the description of an execution, in which the disgusting details are set forth with much scenic effect. The two criminals, *Lacenaire* and *Avril*, who were the sufferers, and whose crimes were of an atrocious nature, are exalted into a sort of melo-dramatic heroes, who, upon the stage of the scaffold, attracted the gay Parisians to "enjoy" the spectacle of their performances beneath the axe of the *guillotine*.

Why does the French Ministerial Press, which a few years ago joined a large portion of the French nation in calling for the total abolition of the punishment of death, now cater for a depraved feeling of curiosity in that part of the public who delight in scenes of blood? Why does that Press now provide for the appetite of those who find a keen relish of enjoyment in gazing upon the mangled bodies and quivering limbs of their butchered fellow-creatures, and who, if they cannot have such scenes in reality, love to gloat over them in imagination? Perhaps we can solve this problem.

It may be recollected that soon after his election to the throne, which the revolution of the barricades had prepared for him, LOUIS PHILIP expressed a strong opinion in favour of the ABOLITION of the punishment of death. It was about the time that the ill-requited LAFAYETTE, M. DE TRACY, and other friends of humanity, declared in the Chamber their wish to signalize the reign of the "Citizen-King"

by removing the machinery of the *guillotine* from the Temple of Justice. The terrible recollections of the first revolution—the crimes of ROBESPIERRE, DANTON, MARAT, and their associates, against whose guilty abuse of democratic power the blood of thousands of victims then cried to HEAVEN, made the idea of abolishing the *guillotine* popular with all the more enlightened and reflecting portion of the French public. The KING, whose father had perished on the scaffold, to which he had previously doomed his cousin LOUIS XVI., was supposed to speak only his honest and sincere opinion when he declared, that from a conviction entertained throughout his life, he wished to see the punishment of death utterly abolished, and would do his utmost to realize that wish.* It was even thought that a retrospective glance

* *Ante*, Vol. I. p. 67.—By a legislative alteration made in 1832 in the administration of the French penal law, the JURIES have the power, in bringing in their verdicts, to state that the prisoner, though guilty, committed the crime under “*extenuating circumstances*.” The effect of *such* a verdict, in a capital indictment, is to subject the convict to a punishment *short of* death. The proportion of such verdicts to the number of unqualified verdicts of “Guilty” in capital cases, must therefore in some degree denote the state of PUBLIC OPINION in France on the question of the punishment of death, just as in England the excessive number of *acquittals* in capital indictments proves the aversion of Jurors to take a fellow-creature’s life. What then were the results for the last year (1834) to which the printed Criminal Returns for FRANCE extend? To the honour of the FRENCH NATION be it spoken, *more than four-fifths* of the verdicts of *Guilty* in capital indictments were accompanied by the qualification we have mentioned, although nearly all were crimes of homicide—for, by the French law, scarcely any other offence, excepting political ones, is punishable with death. Out of 136 verdicts of guilty, 111 were found under “*circumstances atténuantes*,” while only 25 unqualified verdicts of Guilty were obtained. Here was an expression of Public opinion which furnished to LOUIS PHILIP, in the exercise of his royal prerogative, the opportunity of fulfilling his promise of 1830, * made when he was newly raised to the throne, to do “his utmost” to effect the

* *Ante*, Vol. I., p. 67.

of filial piety at a father's fate accompanied the utterance of the sentiment. If so, the feeling which inspired it has since died away, and the lesson is forgotten.

But there was another motive for declaring then against the use of the *guillotine*. The fate of the Ministers of CHARLES X. was trembling in the balance. LOUIS PHILIP wished to conciliate the great Powers by saving them from the punishment of treason. It was thought expedient under all circumstances to prepare the public mind for an act of clemency to those distinguished criminals, by deprecating, even from the Throne, the employment of the *guillotine* as an instrument of justice. LAFAYETTE* and his friends, no doubt, acted with perfect sincerity in exclaiming against the punishment of death on account of its inefficacy in repressing crime, and also on account of the fallible judgment of human tribunals. On the question of the fate of the ex-Ministers we gave our assistance to the advocates of mercy in France. The result of all these exertions was, that the lives of the guilty ex-Ministers were saved, and from that moment the Citizen-KING's abhorrence of the *guillotine*, as part of the machinery of justice, became as pure a fiction as his gratitude to LAFAYETTE, or his promises of "a Monarchy surrounded with Republican institutions."

The Monarchy of "July," the Monarchy of "young France," is now surrounded with *Fieschi* laws—the best apology that has yet been made for the crimes of the Ministers of CHARLES X. Indeed the laws of the *Doc-*

ABOLITION OF THE PENALTY OF DEATH. How did he now avail himself of it? Did he, like a paternal Prince who delights in mercy—did he, like the KING OF ENGLAND, the EMPEROR OF AUSTRIA, or the KING OF PRUSSIA, commute the sentence of the greater part of the 25 sentenced to die? Oh, no! They were all brought to the *guillotine*, save 4, who committed *suicide*, and 6 that received a commutation.—(Vide *Compte Général de l'administration de la Justice Criminelle, pendant l'année 1834, présenté au Roi*, pp. 17, 21.)—ED

* *Ante*, Vol. i. p. 66.

trinaires ought to be more than an apology for the crimes of those Ministers still immured in the Castle of Ham—they ought to constitute their complete justification. The Government that passed the *Fieschi* laws ought to have instantly opened the prison-doors*—ought to have asked their pardon for the ignominious punishment so long inflicted upon them, unless they think that their crime was not in the attempt to subvert the liberties of France, but in *failing* to do that which the *Doctrinaires* have since *accomplished*.

After the lives of the ex-Ministers were saved, the *guillotine* had rest in Paris for a considerable time. At length an attempt was made to revive its use; but popular demonstrations were made, which caused the design to be abandoned.† The same thing occurred with the same success, if we recollect right, more than once.‡ In the meantime it was worked in the provinces; but even the late successful attempt to re-establish it in the capital was carried into effect with great fear and caution; so much so, that up to the morning of the execution, the place where the machine of death was to be erected, was kept a profound secret from all but a few persons, who were not suspected of being likely to join in any plot to interrupt the spectacle. The military preparations also shewed the dread which the Government entertained of some formidable ebullition of public displeasure.

The experiment having so far succeeded, the Ministerial Press blazons it abroad as a sort of triumph. Even among a people so fastidious in their theatrical taste that the dagger of the buskinned murderer is struck *behind the curtain*, the circumstances of an execution are detailed with disgusting minuteness. To shew how little effect such a spectacle is likely to have in the repression of the crimes for which

* Since this was written Prince POLIGNAC and his fellow-prisoners have been liberated.—ED.

† *Ante*, Vol. i., p. 185.

‡ *Ante*, Vol. i, p. 211.

the two culprits suffered, we will quote the words of the Correspondent of a Morning Journal, who appears to have been an eye-witness, and who says, in speaking of the chief criminal, *Lacenaire*—

‘ From the extreme coolness and self-possession with which he has conducted himself throughout his trial, and *up to the moment of his death*, it is to be feared that his *example* will have a most pernicious influence on that numerous class to which he formerly belonged, and that we may shortly hear of the commission of such crimes in this country as are not to be prevented by the fear, or even the certainty, of what is vulgarly considered the severest of all punishments.’

The law in France as well as this country disclaims all punishments by way of retaliation or vengeance, and declares that the punishment of death is not for revenge or expiation, but only for example. The writer of the passage which we have quoted above, fears that the example afforded by the death of *Lacenaire* and his companion on the scaffold, will rather tend to multiply than diminish the crimes of which they were convicted.* Of what use, then, was the disgusting spectacle? Only to familiarize the people with the use of the *guillotine*, and to teach them lessons of cruelty by scenes of human blood “unprofitably shed.” Had *Lacenaire* and his companion been sent to the drudgery and degradation of the galleys, neither of them could have had any opportunity of playing the hero in the face of death. They could not have thrown a dreadful attraction about their crime and its punishment, which, as has been often the case before, may tempt others to emulate their deeds, who, like them, may be prepared to excite a tragic interest in admiring crowds, and to gratify, even on the scaffold, a morbid appetite for distinction.—*Morning Herald*, Wednesday, January 13, 1836.

* This fear seems to have since been realized; crimes of violence appear to have become more frequent in Paris since the use of the *guillotine* has been revived.—ED.

Dangerous precipitancy of the law which orders the speedy execution of convicts for MURDER—Authentic case of INNOCENCE providentially rescued from ignominious death.

In suggesting improvements in our system of penal justice, we have sometimes taken occasion to observe upon the unreasoning and passionate severity which influenced the Legislature when it passed that law which ordains that a person convicted of murder shall be executed *within forty-eight hours* from the time of judgment passed unless a Sunday happens to intervene. So well convinced are the superior Judges of the cruel precipitancy of this enactment, that when a person accused of murder is to be tried at the Assizes, they always arrange, if the number of days allotted by the Commission permit of it, to fix the trial for the *Friday*, in order to give to the prisoner, if convicted, the benefit of one additional day, to prepare for the awful transition from time to eternity. Why should the English law impose upon the English Judges the necessity of thus condemning by their humane practice its inhuman and dangerous severity?

If the convict be really *guilty* of the heinous crime of which he stands condemned, is it necessary that *moral* murder should be added to the sacrifice of life, by sending him, with unrepented guilt upon his soul, into the presence of his CREATOR? If he be *not* guilty, though condemned, as from the fallibility of human tribunals sometimes happens, is it necessary for the *ends of justice* that he should be ignominiously cut off from among the living within so short a time as to prevent the chance of establishing his innocence, and correcting the fatal *error* of a mistaken judgment? It is true that as the law now stands, it has sometimes happened that, by a sort of Providential interposition, the proof of innocence has suddenly been made manifest, and the victim already bound for the sacrifice, has been snatched from beneath the descending sword of the law,

and restored to liberty and life. A remarkable instance of such interposition will be found in our columns to-day.* But the Legislature, in dealing with crime, ought not to give way to passion and resentment even against the guiltiest of mankind, or to leave the vindication of innocence, when unjustly condemned, to the chance of a miraculous interference.

To allow a period of some weeks to a person convicted of murder to repent of the crime, and to receive the religious instruction necessary to prepare the mind for its awful doom, is not to defraud the stern law of its victim. Nor can the Legislator have much regard for justice who, in his precipitancy to punish guilt, neglects altogether the duty of protecting innocence.

* The case referred to was that of *John Collins*, tried at the Galway Assizes, July 14, 1835, before Mr. Justice BURTON, and convicted as an *accomplice* in the murder of Bridget Ryan, in the preceding month of March. Her head had been severed from her body, and both thrown into the river, where they were found near the townland of Dunmore. *Michael*, the husband of Bridget Ryan, who was, in fact, the murderer, was tried at the same time. The evidence, which was circumstantial, so perfectly confirmed certain voluntary statements made before the Magistrates by *Michael Ryan* prior to commitment, that the guilt of both the prisoners appeared certain. The Jury, a most respectable and intelligent one, delivered their verdict without hesitation—*Ryan* remaining silent, but *Collins* loudly protesting his innocence. Both were immediately ordered for execution upon the following Monday. At two o'clock the next day, a Clergyman was seen in earnest conversation with the Judge. The Judge retired to his chamber, and staid the execution for a fortnight, at the expiration of which, *Ryan*, confessing his own guilt, underwent the sentence, declaring on the scaffold that *Collins* had no knowledge of the murder. Subsequent investigation proved the truth of this, and poor *Collins*, aided by a few pounds collected in the town of Galway, within two months, by an order from the Castle, Dublin, was released, to again enter on a life of industry upon which a wife and four children depended.—ED.

The more atrocious the crime with which any person is charged, the more danger there is of a prejudiced decision, in consequence of the popular excitement and passion which such a crime usually produces, and which are but too apt to taint the atmosphere of Courts of Justice, and disturb and unsettle the judgment even in the Jury-box. Cases of murder sometimes occur in which it is difficult for any person charged with the offence, though innocent, to have a fair trial. In such cases it is very difficult for Juries, even when carefully admonished by the Judge, to resist the influence of that "pressure from without" which may cause them to confound accusation with proof, and to give to merely suspicious circumstances the force of conclusive evidence.

Our readers may recollect the case of *Mary Wright*, who was tried at Norwich not very long ago for murder, and convicted. The trial took place on a Friday, and the facts were clearly proved; the defence was insanity, but one of the witnesses who was to prove that the wretched woman was deranged at the time of the commission of the offence, did not answer when called. It was afterwards ascertained that the witness was sick in bed at his home upwards of twenty miles from the Assizes. If there had not been in that case peculiar circumstances,* wholly unconnected with the defence of insanity, which enabled the prisoner's Counsel to obtain a stay of execution, the prisoner must have been executed on the Monday morning following; but the stay of execution gave time for collecting those proofs of mental derangement which were not forthcoming on the trial, and the life of the convict was eventually saved. A poor prisoner, it should never be forgotten, who has not the means of paying the expences of witnesses on his or her behalf, cannot, as the prosecutor can, compel their attendance.† A prisoner so circumstanced, may have a

* *Ante*, p. 130. † See (ext. *Edin. Rev.*) *ante*, Vol. I. p. 233.

complete answer to the charge, if he had only the means to compel the attendance of witnesses ; but hard is the fate of the friendless poor, and, if something like a miracle does not reveal his innocence at the trial, and, if the offence charged be one which causes the forfeiture of life within forty-eight hours, small indeed is the chance of the fatal error being retrieved, which cuts off the innocent from among the living by an ignominious death.

It is a source of sad reflection upon the legislative wisdom of this country that its laws should be more careful to protect the rich man's property than the poor man's life. In suits about property the law has guarded against the injurious consequences of rash or prejudiced decisions by various modes of appealing against the erroneous judgment which it is not necessary now to specify. Even a small matter of property may be tried several times before it can be said to be finally decided ; but there is not thrown over human life the protection of any Court of criminal revision. If the Judge who tries a capital case choose to reserve a point of *law* for the consideration of all the Judges, he may do so, and the point of law will be fairly and fully considered ; but there is no tribunal to which an appeal lies upon the *facts* of the case, as there is in France. We do not call the secret and irresponsible authority of the HOME OFFICE a COURT OF APPEAL, though it sometimes reviews the decision of a Court of Criminal Law, and occasionally annuls its judgment by reprieving the convict, but its power is capriciously as well as irresponsibly exercised ; nor is it ever supposed to interfere without the concurrence of the Judge, so that if another SCROGGS or JEFFRIES were to disgrace the ermine, the Home Office would leave the judicial butchers to pursue unrestrained their occupation of legal murder.*

* Lord BYRON's allusion, in the House of Lords, to the memory of Judge JEFFRIES will be found inserted, *ante*, Vol. i. p. 178.

We have at the present day very different Judges from those whom we have named, and upon whose memories history has passed the sentence of irrevocable infamy; but the laws which are intended to punish guilt and protect innocence, should have regard not to persons, but to principles; for persons change, but principles do not.

In illustration of our argument as to the necessity of repealing the law which ordains that a person convicted of murder shall be executed within forty-eight hours, we publish in another column to-day the case of a man named *John Collins*,* who was convicted at the last Assizes at Galway, in Ireland, of murder, and left for execution; but whose innocence was almost miraculously brought to light before the expiration of the short period allotted to one in his situation to prepare for death. As long as human tribunals are liable to error, a reasonable time ought to be given in cases of conviction for murder to repair a mistake whose consequences are so dreadful to a fellow-creature. It might have happened that the innocence of *Collins* had not been made apparent until a week or more after his conviction; but then he would have been in the grave—a murdered man—murdered *by the law*—in its rash and passionate precipitancy to avenge the murder of another!—*Morning Herald, Tuesday, Feb. 2, 1836.*

[By reference to article dated April 29, 1836, (post, p. 333,) it will be seen that the law has been since amended by the 6 & 7 Will. IV. cap. 30, being the Act which Mr. AGLIONBY'S exertions, so honourably to himself, and usefully to his country, were instrumental to obtain.—ED.]

*Case of Rogers capitally convicted under the LANSDOWNE ACT,
with remarks upon the character of that Act.*

The RECORDER of London,† in passing sentence of death at the Old Bailey, last Wednesday, upon a man named

* *Ante*, note, p. 296.

† Hon. C. E. LAW, M. P.

Rogers, held out to him little or no hope of mercy. His crime was that of attempting to discharge a pistol at his wife, as reported in the *Morning Herald* of the preceding Saturday.

As to the offence for which this man has been doomed to pay the forfeit of his life, far be it from us to attempt to extenuate it. It is a foul and heinous offence—an offence of great moral as well as legal criminality. Christian morality forbids that it should be lightly treated, as if it were a venial crime; but Christian morality does not enjoin that the passionate and unsuccessful attempt upon the life of one person shall be washed out with the blood of another. The British law does, indeed, enjoin it; but it is the modern, not the ancient British law, that obliterates all distinction between a sudden and abortive attempt upon human life, and the finished act of deliberate murder.

It was in the beginning of the nineteenth century that certain attempts on human life were made equally penal with the completed crime of murder. Lord ELLENBOROUGH, as if he thought that Statute-book which Judge BLACKSTONE had eloquently reprobated for its bloody severity, was not sufficiently loaded with life-destroying enactments, framed a statute which at once converted several *misdemeanors* into *capital* offences; among others *that* for which the culprit *Rogers* has been sentenced to die upon the scaffold. Afterwards the Marquis of LANSDOWNE distinguished himself, as Home Secretary, by spreading the net of exterminating law still wider over human life. The alchymy of office, by a strange sort of moral transmutation, changed the friend and supporter of ROMILLY into the imitator and rival of ELLENBOROUGH, ROMILLY's most vigorous and formidable opponent. The LANSDOWNE ACT, which sadly wants the pruning knife of legal reform, is but an "enlarged and improved" edition of the ELLENBOROUGH ACT—"improved" in the sense in which an addition to its exterminating enactments constitutes improvement. Thus did a Whig in office "liberalize"

the penal law, against which, when only looking up to office, he was one of the indignant declaimers.

Let us give some instances of this sort of "improvement" of the law. The old COMMON LAW made a distinction, and very properly, between *attempts* to kill or do bodily harm and *actual* murder; as it also made a distinction between attempts to commit other felonies and the actual commission of such felonies, which distinction in many cases still exists. When the rage for multiplying capital punishments began to possess our Legislators, they lost sight of the judicious policy of the law which had left a *locus penitentiæ* to the offender, and, taking counsel only of unreflecting passion, proceeded to pass Acts which one after another made the bare attempts to kill or do bodily harm equally penal with murder. Some of those statutes were passed "upon the spur of the occasion," when the Legislature was too angry to be either just or wise. Such was the *Coventry* Act passed in the 22d year of Charles II., and the Act of the 9th Anne, the former enacting a new capital offence, because of the malicious attack made upon Sir John COVENTRY, a Member of Parliament; the other enacting another capital offence, because of the attempt which had been made by an exasperated individual upon the life of Mr. HARLEY, a Privy Councillor. Then came the *Black Act*, passed in the 9th year of George I.; next the statute passed in the 26th year of George II., and at length that statute to which we have already alluded, which was passed in the 43d year of George III., and is commonly called Lord ELLENBOROUGH'S ACT. All these statutes made *capital* various offences against the person which had been only *misdemeanors* at COMMON LAW. The LANSDOWNE ACT repealed the Ellenborough Act, and substituted one for it which is, in many instances, bloodier. In one short clause—the eleventh—it creates no less than four new *capital* offences! Let it be borne in mind also that this statute was passed so recently as the 9th year of George IV. It is impossible to say how far this rage

for human extermination by law would have gone, if we had not taken the field against the monster of Draconic legislation, and grappled with it during a conflict which has now lasted for more than seven years, with such success as ensures the final triumph of enlightened opinion over that legislative barbarity which had too long disgraced the name of Justice.

As to the offence of the culprit to whose case we have alluded in the beginning of this article, we are far from wishing, as we said before, to extenuate it. The RECORDER, whose character we respect, cannot think worse of that offence than we do. Our object is to assist in the repression of such dangerous crimes—an object which experience proves to be most effectually promoted by punishments which do not set examples of blood. Suppose this man underwent the fate of the murderer who had made sure of his victim, would not the next offender take better care than he appears to have done, to avoid a “flash in the pan,” and so to silence for ever the witness of his atrocious design? The culprit, it seems, intended to commit suicide with a second pistol which he had ready, in his fury, which more resembled the wildness of a madman than the temper of a cold-blooded destroyer of human life. What dread of death can such a man have? To what end can the erection of the gallows in his case serve, except to familiarize the populace with blood? Can the disgusting spectacle have any influence in repressing such crimes for the future? We deny that it can. Experience abundantly confirms our opinion.

Need we remind the Government and the public that in France, Belgium, and Holland, as in some other States, the experimental results of mitigating the capital laws, and substituting penalties more reasonable, and, therefore, more likely to be uniformly enforced, had been highly favourable to the views which we take of criminal jurisprudence? Under the mitigated system atrocious offences, more especially murders, *diminished*. Our readers have already seen the

statistical Tables which place this fact beyond dispute. [*Ante*, p. 258, &c.] The same observations apply to Prussia, which, though governed by an absolute Monarch, has nevertheless the advantage of its laws being administered by a paternal Sovereign. England, too, has in WILLIAM THE FOURTH a paternal KING, who, we believe, were it in his power, would at once get rid of our exterminating laws. The blood of his subjects is precious in the eyes of the constitutional KING OF ENGLAND; but, with the same feelings, he has not the same power as the absolute Sovereign of PRUSSIA. He is bound by the advice of his Ministers; and we are sorry to say that the Whig ADVISERS of the Crown but too often exercise their official authority in opposition to the principles which raised them into power. What necessity was there for returning to executions [as mentioned, *ante*, p. 286,] after an interval of two years and seven months, during which society received no detriment from the absence of those revolting spectacles? Whoever is responsible, we can with confidence say that the KING *did not wish* the renewal of those brutalizing exhibitions.—*Morning Herald, Thursday, February 18, 1836.*

Reprieve of the Convict Rogers.

The RECORDER'S Report, which we published yesterday, affords another proof of the clemency which distinguishes the reign of WILLIAM THE FOURTH. The sentences of all the capital convicts are to be commuted. Among them is the culprit *Rogers*, touching whose case we made some observations not long ago, in the hope of being able to convince the advisers of the Crown that his offence, though deserving of severe punishment, was not one that demanded, or would justify, the sacrifice of human life. That hope has not been disappointed. Every day's experience proves more and more that society can be best protected, and the laws best upheld, by punishments which do not revolt the

natural feelings of mankind.—*Morning Herald, Thursday, February 25, 1836.*

Session 1836—Second Reading of the PRISONERS' COUNSEL BILL in the Commons, on the motion of Mr. EWART.

The great majority by which the second reading of Mr. EWART'S Bill for allowing prisoners charged with felony to make their full defence by Counsel was carried, is decisive of its success in the House of Commons. A majority of 179 to 35 allows no hope of a successful rally on the part of the advocates of one-sided justice against this measure, which has for its object the securing a fair, full, and impartial trial to a prisoner charged with crimes that affect his liberty or life.

Can there be a severer reproach cast upon the law of a civilized country than that it prohibits the Counsel for a poor man accused of the most heinous crime, to make a "full defence" for his client? Is this to administer justice fairly and impartially between the Crown and the KING'S subjects? Is it not more like a mockery of justice than its reality, when the prosecutor's Counsel can give to the facts of the case whatever colouring they can derive from ingenious eloquence or subtile reasoning, while the lips of the prisoner's Counsel are closed from affording such explanations to the Jury as would make those facts reconcilable with the prisoner's innocence?

When we hear it urged as an argument against allowing prisoners Counsel to address the Jury, that it would consume *too much time*, we can hardly believe that such an argument is seriously urged. It seems rather like an ironical banter upon the injustice and cruelty of the present practice. What! shall it be said that the economy of time in Courts of Criminal Jurisdiction is of more importance than the full and impartial administration of justice? Yet the whole sum and substance of the objection to Mr.

EWART'S Bill resolves itself into the affirmative of this question—in other words, that it is better to *do injustice quickly than to do justice slowly*.

We deny, however, that time is saved by the present practice. If it were, it would be no reason with us for refusing to the prisoner, who stands upon his deliverance for *his life*, the right which the existing law denies him, but which reason and humanity concede, that of meeting the prosecutor upon equal terms, and opposing the reasoning and eloquence of Counsel on one side by the reasoning and eloquence of Counsel on the other? Who speaks of compensating for the denial of full and equal justice, by a saving of time in *questions of property*? Who ventures to propose that in ejectments for land or houses—cases of promissory notes, or goods sold and delivered, that the defendant should not be allowed to make his full defence by Counsel, in order that the time of Courts of Justice might be saved? No person dares to propose such a monstrous absurdity. Is it because *property* is of more value than *life*? Is it because the just or unjust infliction of transportation or ignominious death upon a *poor* man is a matter less worthy of careful and searching investigation, than diminishing the property of his *wealthy* neighbour by an acre of ground, or a few pounds sterling?

In questions of property, besides the Counsel for the defendant being allowed to make a full defence, there are new trials, and other modes of appeal, not allowed by the law to protect human life and liberty against erroneous decisions of Courts of criminal jurisdiction. We speak of trials for felony, for it is only in such cases that prisoners are prevented from making their full defence by Counsel. That right is acknowledged expressly by statute in cases of treason, and invariable practice has established it in cases of misdemeanor. Trials for felony, therefore, constitute in this respect an absurd and disgraceful anomaly in the law of England. The anomaly is one merely of usage, as

Mr. LYNCH stated. No statute ever created it. Still we admit that a statute is necessary for its removal; and we hope that Mr. EWART, who has so long and so ably laboured in the field of legal reform, will have the credit and satisfaction of eradicating from our judicial system the anomalous practice by which reason is outraged, and justice mutilated or denied.

Let the public look to the supporters and the opponents of the measure; and if the arguments which reason suggests in favour of the measure need any additional weight from the authority of names, that weight will not be found to be wanting. Who opposed the second reading of Mr. EWART'S Bill? Sir E. WILMOT, Mr. POULTER, Mr. Sergeant GOULBURN, Col. PERCEVAL, Mr. CRIPPS, and Mr. PLUMPTRE. Who spoke in its support? Sir F. POLLOCK, Dr. LUSHINGTON, Mr. O'CONNELL, Mr. LYNCH, and Sir JOHN CAMPBELL, the Attorney-General. Here we have but a solitary practising Barrister venturing to raise his voice against the Bill, while among those who spoke in its favour were His Majesty's ATTORNEY-GENERAL and four other eminent members of the legal profession. We recollect on a former occasion, a very able speech having been made in support of a similar Bill by Mr. HORACE TWISS, and long before that, the justice and necessity of such a measure had been most convincingly reasoned by the ablest and most experienced advocate of modern times, then Mr. SCARLETT, now Lord ABINGER.

In the discussion on Wednesday night the ATTORNEY-GENERAL declared that all reasoning was in favour of allowing full defence by Counsel in cases of felony as well as misdemeanor, and added, that "although some little inconvenience might, perhaps, be expected to follow from such a change as this Bill went to effect, the time was come when that scandal should be removed." Sir F. POLLOCK said that the present state of the law was, in this respect, disgraceful to Parliament, and dangerous to the country.

He deprecated the distinction which existed between the practice in civil and criminal cases, and shewed the practical futility of that maxim which says, the Judge shall be of Counsel for the prisoner.

Mr. LYNCH alluded to cases of persons unjustly convicted for want of a full defence by Counsel, and instanced more particularly the case of the man *Collins*, tried and sentenced to be executed for murder at the last Assizes of Galway, but whose innocence was providentially discovered before the expiration of the short interval allowed by law between sentence and execution. We published the case of this man, as our readers will recollect, the other day.* He was saved from an ignominious death as by a miracle; but it is probable that if Counsel had been allowed to address the Jury for him on the evidence, he would not have been convicted. Mr. O'CONNELL stated instances of innocent persons, to his own knowledge, having been convicted and *executed, who must have been acquitted if Counsel had been allowed to address the Jury*, more especially the case of three brothers, of which he had formerly stated the melancholy details.† He alluded also to certain evidence

* *Ante*, Note, p. 296.

† "I myself have seen instances of that description. I defended three brothers of the name of *Cremming*, within the last ten years. They were indicted for murder. The evidence was most unsatisfactory; the Judge had a leaning in favour of the Crown prosecution, and he almost compelled the Jury to convict them. I sat at my window as they passed by after sentence of death had been pronounced—there was a large military guard taking them back to the jail, positively forbidden to allow any communication to be had with the three unfortunate youths. But, their mother was there, and she, armed in the strength of her affection, broke through the guard, which was strong enough to resist any male force—I saw her clasp her eldest son, who was but 22 years of age—I saw her hang on her second son, who was not 20—I saw her faint when she clung to the neck of her youngest boy, who was but 18—and I ask what recompence could be made for such agony?—*They were executed—and—they were innocent!*—"
—(Speech of Mr. O'CONNELL at Exeter Hall, June 2, 1832.)

taken before the Lords, which was said to have shaken the opinion of a noble and Learned Lord on the subject, and expressed his regret that any member of the profession should have opposed the measure, on the ground of *inconvenience and loss to the Bar*.* As we have not seen that evidence, we know it only by this description. The Noble and Learned Lord alluded to is Lord BROUGHAM, who was the principal means of defeating the Prisoners' Counsel Bill in the House of Lords last Session, contrary to former solemnly-declared opinions, as a member of the House of Commons, and a writer in the *Edinburgh Review*.

But we say, that if an absurd, unjust, and anomalous practice, deeply affecting the lives and liberties of men, is to be allowed to prevail in Courts of Justice, because to reform it, might curtail the convenience or the pelf of advocates in the Criminal Courts, then indeed the administration of justice is made for the Bar, and not the Bar for the administration of justice. If it be right that men should be unjustly expatriated and hanged, to prevent the fees of Barristers being diminished by departing from the rapid and rail-road speed of justice, why should it be any longer a bitter sarcasm to say with the poet,

“ And wretches hang that Jurymen may dine.”—?

Surely it is as good a reason to hang a man in order to allow a Jurymen to go to his dinner, as to hang and transport many men who ought neither to be hanged nor transported, that Barristers may make as much pelf as possible by the speedy dispatch of the business of a Sessions or Assizes.

* The bearing of these remarks will be seen by referring to the Evidence of Mr. Charles PHILLIPS, a Barrister and friend of Lord BROUGHAM, who was one of the Witnesses before a Committee of the House of Lords in 1835. This evidence was reprinted in 1836 on the motion of Lord LYNTHURST. It is right to state that the learned gentleman subsequently denied, in the most positive terms, being influenced by the motive attributed to him by Mr. O'CONNELL.—ED.

We venture to say, however, that there is more time now consumed in cross-examination of witnesses, and by putting questions which are only intended for the purpose of conveying explanations and suggestions to the minds of the Jury, in order to supply the place of a speech, than would be consumed in general by a speech on behalf of the prisoner. The principle is at present admitted, for the prisoner is allowed to speak for himself if he can; but few are they who are capable of addressing a Jury connectedly on any subject, when not accustomed to speak in public. A prisoner sometimes has a long rambling address written for him, which takes up more time in delivery than an able speech would take. Why then not give Counsel the privilege which the poor and ignorant prisoner has already, but to whom it is little or nothing better than a nugatory privilege? We were aware that Lord DENMAN was formerly a strong supporter of the principle of allowing prisoners to make their full defence by Counsel; and we are glad to find, from what Dr. LUSHINGTON said, that the Lord CHIEF JUSTICE has not, like Lord BROUGHAM, swerved from his opinion on that subject.*—*Morning Herald*, Friday, February 19, 1836.

* [We have already (*ante*, Vol. i. p. 233,) inserted one extract from Mr. BROUGHAM's paper: we now subjoin another.—ED.]
'There is a Judge now upon the Bench who never took away the life of
'a fellow-creature, without shutting himself up alone, and giving the
'most profound attention to every circumstance of the case! and this
'solemn act he always premises with his own beautiful prayer to God
'that he will enlighten him with his Divine Spirit in the exercise of
'this terrible privilege! Now would it not be an immense satisfac-
'tion to this feeling and honourable magistrate, to be sure that every
'witness on the side of the prisoner had been heard, and that every
'argument that could be urged in his favour had been brought for-
'ward by a man whose duty it was to see only on one side of the
'question, and whose interest and reputation were thoroughly embarked
'in this partial exertion? If a Judge fails to get at the truth after
'these instruments of investigation are used, his failure must be

*Anticipated Discussion on Committal of the PRISONERS' COUNSEL
BILL in the Commons.*

The Prisoners' Counsel Bill stands for consideration in Committee this evening. We mention it not with the intention of repeating arguments which we have often urged in its favour, and which have never been answered; but solely with the view of reminding Members of Parliament, who are favourable to the just and rational measure of allowing persons charged with felony to make their "full defence" by Counsel, that the Bill is to be committed this evening, and that their attendance may be necessary to prevent any attempt to defeat those provisions, in detail, that are essential to giving practical effect to the principle which the House has already recognised.—*Morning Herald, Wednesday, March 2, 1836.*

*Remarks on the Committal of the PRISONERS' COUNSEL BILL
in the Commons.*

As far as the House of Commons is concerned, Mr. EWART'S Prisoners' Bill may now be considered safe. In that branch of the Legislature the triumph of a just principle has been achieved—a glaring anomaly in the administration of justice condemned—and the right of a prisoner charged with felony to make his full defence by Counsel, recognised as a principle that ought to be incorporated with the administrative system of British law. We trust the other House of the Legislature, whose independence we have ever acknowledged and supported, will, when it comes before them, confirm the just decision of the Commons, and remove

'attributed to the limited powers of man—not to the want of good inclination. We are surprised that such a measure does not come into parliament with the strong recommendation of the Judges.—It is surely better to be a day longer on the circuit than to murder rapidly in ermine.'—*Edinburgh Review*, Dec. 1826, p. 86.

from the practice of our Courts of Justice the reproach of denying to the prisoner, who is put in peril of liberty or life upon an accusation of *felony*, that right which has been conceded to the accused in all cases of *high treason* and *misdemeanor*, and which is universally allowed to the defendant in those instances in which the rights of *property* only are involved.

It would look as if Mr. WAKLEY meant to throw ridicule on the Bill by proposing, as an amendment, that other persons than Counsel learned in the law, or attorneys, should be allowed to defend prisoners. In his own profession Mr. WAKLEY has endeavoured to obtain some credit with the public by exposing and hunting down *unlearned* practitioners, *alias* quacks, who intrude upon the offices of the regularly bred physician and surgeon, and kill His MAJESTY'S subjects by pill and potion—intrepid in their ignorance, and matchless in the effrontery of their empiricism which traffics on the credulity of mankind; yet Mr. WAKLEY is the man who would place the lives and liberties of his fellow-subjects, when charged with the most serious violations of the laws, in the hands of persons as ignorant of those laws as uneducated pretenders to medical or surgical knowledge are ignorant of the physiology or anatomy of the human frame. Without meaning to disparage the abilities of the Hon. Member for Finsbury, we must say that his proposition savoured of the most egregious quackery of legislation. It would degrade Courts of Justice to the lowest point of contempt. As the ATTORNEY-GENERAL well observed, if such a proposition were adopted, it would be open to any returned convict from Botany Bay to put on a wig and gown, and appear as the advocate of a prisoner on trial.

The law is a science not easily mastered—years of study and some practice are necessary to qualify a man as a judicious and safe advocate, whatever his natural abilities may be. In law, as in physic, “a little learning is a dangerous thing;” but, to Mr. WAKLEY'S apprehension, utter ignorance of law

is a great recommendation in an advocate. Certain it is that every charge of felony, and, indeed, of all other crime, involves a mixed question of law and fact. The prisoner has a right to every point of law in his favour, as much as to the evidence that goes to refute the charge. The nice arguments that frequently arise upon indictments, and upon the admissibility or inadmissibility of evidence, we need not allude to. Suffice it to say that any ignorant man taken out of the street would be as well qualified to set a broken leg, perform an operation in lithotomy, or cure a dangerous distemper, as a man unlearned in the law could be to argue the legal points which frequently arise upon indictments and evidence, and on the determination of which very often a prisoner's fate depends.

As the law stands at present, a prisoner may, if he please, make a full defence for himself, though few avail themselves of it, and those who do, generally prove the truth of the old adage, which is too musty for repetition. We have often known a prisoner's life or liberty saved by a judicious advocate declining to put certain questions, which the prisoner or his friends might be most anxious to put to witnesses. The eminent discretion of the two greatest advocates of modern times—the late Baron GARROW, and Mr. SCARLETT, now Lord ABINGER, saved many and many a client, whom noisy ignorance and loquacious presumption would have inevitably ruined. We suspect that when men are chosen as Judges to administer the laws, *because* they have never been members of the profession of the law, and consequently know nothing of the laws which they have to administer—men will be chosen as advocates for the same reason, but *not till then*. The quackery of the “age of intellect” certainly surpasses the quackery of all former ages.

The second clause of the Bill, which an attempt was made to throw out, but which was defeated by nearly three to one, is a most important clause. That clause provides that

‘ In all cases of felony, and likewise in all cases of treason, mis-
‘ prison of treason, and misdemeanor, if after the close of the case
‘ for the person or persons accused, the Counsel for the prosecution
‘ shall make any reply, the Counsel for the person or persons accused
‘ shall be admitted to answer it.’

We are surprised that Sir John CAMPBELL, whose experienced judgment and acute understanding must have made him well aware of the value of this clause, should have attempted to get it rejected by the House—while Sir F. POLLOCK, a Conservative, contends, on the side of liberality and justice, that nothing should be stated on the part of the Crown against the prisoner but what the prisoner should have an opportunity to answer or explain. It has always appeared to us a monstrous privilege which the ATTORNEY-GENERAL claims in Crown prosecutions, and which even his delegates have latterly claimed and exercised, of replying upon the prisoner even where no evidence has been adduced for the defence. Such a privilege could only have its origin in those times when Courts of Justice pandered to the passions of a tyrannical Government—when arbitrary principles invaded the sanctuary of the law, and our highest constitutional tribunals were tainted with the spirit of Star-chamber practice.

We are aware that the chief argument, if argument it can be called, upon which the opponents of the measure rely, is that it will greatly protract the time now given to Assizes and Sessions. Hence it may follow as a corollary, that it will diminish the gains of the profession, inasmuch as it will take a longer time than heretofore to earn a given amount of fees, and more work must be done for the same money. We do not think that many members of the Bar would be induced to oppose the Bill from such an illiberal and sordid motive. If there were any thing in the argument touching the greater consumption of time, our answer would be, that it is a wretched economy which saves *time* at the expense of *justice*. But, in truth, as we formerly

shewed, there is nothing in the argument. More time is now consumed in irregular cross-examinations, and in putting questions merely with a view to *suggest explanations* to Juries, than would be consumed in making such observations, as the case called for, on behalf of the prisoner, in the consecutive form of a speech.—*Morning Herald, Friday, March 4, 1836.*

[The next article on this subject will be found under date June 25, 1836, when Lord LYNDBURST had moved the Second reading of the Bill in the other House of Parliament.—ED.]

Trial and Execution of FIESCHI and others in Paris.—Remarks on Criminal procedure in FRANCE.

The farce of the trial of *Fieschi* and his accomplices—for it had more of the horrible mockery of justice than the solemnity of a serious judicial proceeding—has terminated in a tragedy; and the curtain of this barbaric drama, which has so long amused France, and disgusted the rest of the civilized world, has fallen upon a revolting scene of blood.

During his trial, and since his condemnation, the hero of this horribly ludicrous exhibition said that he rendered LOUIS PHILIP more service than any other man. He has served him, we believe, in a double capacity—in his *life*, by affording him a pretext for enacting the atrocious laws that effectually subvert the independence of trial by Jury, and extinguish the liberty of the Press—in his *death*, by furnishing him with something like a plausible argument for the restoration of the *guillotine* to its bloody uses, as part of the political machinery of a Government which, uncontrolled by any sense of principle or shame, relies upon terror, and has lost all hold upon the affections of the people.*

* In a former page (291,) we alluded to the strong and general aversion of the public in France to the penalty of *death*, and to the Official demonstration of that fact, by the small proportion of unqualified *capital* verdicts *passed* from Juries—being only 25 in the year, for the whole Kingdom.

On the present occasion let us devote our space, limited as it necessarily is,

Let our Whig Ministers boast of their close and intimate alliance with such a Government—let them imitate it again, as they have already done, in working the machinery of exterminating laws, we can only say that the ruthless AUTOCRAT, who preserves “order in Warsaw” by the cannons of the citadel pointed on the devoted town, has a still closer and more intimate alliance with the citizen-despot of the Tuilleries than our own Government in reality enjoys. They are worthy of each other. The one usurped the

to a translation from one of the French Journals—and, the probability that the passage about to be quoted, was penned by the celebrated ARMAND CARREL (for whose memory we have elsewhere* recorded the tribute of unaffected sorrow and esteem,) will not diminish its interest with readers on both sides the Channel.

FROM LE NATIONAL, 20th February, 1836.

‘ In our republication of the opinions, expressed by the *Journals of every shade in politics*, on the three executions † which took place yesterday, it is far from being our desire to fatigue our readers with the horror, and the disgust, which these revolting scenes excite. It is not our custom to enter minutely into such details, but we think it of importance to put upon record, the precise terms, and the tone of feeling, in which the Journals, organs of different opinions, have described this first act of pretended “national vengeance.” It is but too well known that the same “national vengeance” has served the purpose of each dominant party in its turn; and that all these parties were, after the last revolution of July, unanimous in pledging themselves to each other, that the political scaffold should never be again employed. It will be perceived, by the sentiments expressed in the greater portion of the Journals—how, or in what manner this promise has been kept—and, the degree of resistance that would oppose itself in the great mass of public opinion, however swayed by politics, to any system of government, whether monarchical or republican, which should attempt to intimidate France by judicial sacrifices of blood. We shall not particularise any of the reports, which we now republish; but, those most worthy of honourable distinction will be obvious, so that it is superfluous to indicate them.’

With this simple introduction the enlightened Editor inserts, *seriatim*, the observations of his Contemporaries of the Paris Public Press, the following being conspicuous, viz.:—*Le Journal de commerce*, *L’Impartial*, *Le Journal des débats*, *Le Constitutionnel*, *Le Moniteur de commerce*, *Gazette des tribunaux*, *Le Corsair*, *Les Unions religieuses*, *Le Droit*, and *Le Bon sens*,—all strongly condemning the mistaken policy which presents to the people such barbarous spectacles for the purpose of strengthening the “Throne of July.”—Ed.

* *Post*, p. 353.

† *Fieschi*, *Morey*, and *Peplin*.

birthright of the savage CONSTANTINE to more than rival his cold-blooded crimes—the other ascended the throne of his liberticide cousin CHARLES X., to prove, that with a revolutionary title, he could be a still more bitter and persevering, though more insidious, enemy of national liberty.

A time may come when the dreadful mystery that still hangs over the *Fieschi* plot will be revealed; for the trial did nothing towards clearing up that mystery, or rather it has enveloped it in tenfold darkness. No reasonable person could follow the course of *Fieschi's* "revelations" without being convinced, that what were called his revelations were, for the most part, mere "lies," partly the fictions of a madman—partly the more deliberate falsehoods of a hardened villain; yet it was upon the evidence of this abandoned wretch, and that of his no less abandoned concubine, *Nias Lasave*, that the two unfortunate men, *Pepin* and *Morey*, were sent to the scaffold! Ought a dog to have perished on such evidence, uncorroborated as it was? Justice forbids it—but justice in France at the present day—ay, in the France of July—has no necessary connection with truth, or reason, or humanity!

The evidence of *Fieschi*, and that of the vile woman who has been made an object of such tender and romantic interest in the Parisian Journals, must be taken as the evidence of *one* person. It was the poisonous product of the same root, growing upon the same stem. Where, then, is the corroboration of the principal villain deposing against those whom he described as his accomplices? A respected Evening Journal (the *Standard*) says, "A general impression prevails (in Paris) that the lives of *Pepin* and *Morey* might have been spared. The conduct of the whole affair reflects much discredit on the French system of criminal jurisprudence." We have always denounced and repudiated the attempts of some pseudo-reformers to introduce into British Courts of Justice the French system of interrogating prisoners. If we wanted an additional practical argument

against that system, it would be the trial of *Fieschi*—a trial in which the administration of what was miscalled justice was grounded upon the monstrous absurdity of receiving, as evidence, the callous, flippant, extravagant, and uncorroborated statements of a ruffian, who boasted of wholesale assassination as a patriotic deed—a deed deserving of the thanks of the KING and country, while he was steeping his soul deeper in the blood of human sacrifice, in denouncing others !

According to our English system of criminal jurisprudence, no man can be legally convicted upon the evidence of an accomplice, or of any number of accomplices, unconfirmed in material facts. We are aware that some Judges hold a somewhat different doctrine, and say that a case may be left to the Jury upon the unsupported testimony of an accomplice, but that it would be unsafe to convict upon such testimony alone. This doctrine, though differing in principle from that which we have stated, has the same practical result. It precludes the possibility of a conviction upon the unsupported statements of a *Fieschi*, or a *Thurtell* ; or, if a conviction under such circumstances took place, we should like to see the Judge who would dare to leave a prisoner for execution upon a verdict so obtained. He would well deserve impeachment—but we argue upon an impossible hypothesis. No *British* Judge would neglect the sacred duty of telling a Jury that upon the evidence of an accomplice no conviction ought to follow, and that the confession of a prisoner ought to have no weight whatever against his fellow-prisoners. As far as *Fieschi's* statements implicated himself they were a confession ; but as against his fellow-prisoners they ought not to have weighed a feather in the scales of Justice. As to the wretched female, she evidently spoke under the diabolical inspiration of her paramour. The infusion of amatory sentiments into this indecent mockery of a trial, was not the least odious part of these disgusting proceedings.

France considers itself a polished and refined nation ;

but to characterize the scenes which occur in its Courts of Justice, on the most important trials, as semi-barbarous, is not to apply to them too strong an epithet. The ridiculous intermixture of dialogue between prisoners, witnesses, and Judges—the flippant interruptions—the mutual recriminations—the jests, repartees, violent ejaculations and ravings, that pass between the parties concerned, form the most extraordinary contrast that can be conceived to the decent, grave, and solemn character of the proceedings in a British Court of Justice, where most of our Judges, especially in cases of heinous crime, endeavour as much as possible to exclude human passions from the temple of the laws. We speak now merely of the *administration* of justice, not of our criminal *legislation*, which is still less reasonable and mild than that which the CODE NAPOLEON gave to France. Yet even our administration of justice, good as it is in other respects, is imperfect, and will be so, until the prisoner is placed on an equal footing with the prosecutor, by being allowed to make his full defence, in cases of felony, by Counsel.

We have spoken of an indecent mockery of a trial. The want of that decency becoming a Court of Justice, was visible in all the proceedings of *Fieschi*. But suppose those proceedings had been conducted in the most decorous manner, and something better than the lies of a villain and the ravings of a madman produced as evidence against *Pepin* and *Moriz*, we would still call the trial a mockery, having taken place, as it did, before a tribunal wholly *dependent upon the Crown*, the Chamber of Peers. Let us suppose the Cato-street conspirators tried by the British House of Lords, instead of a Jury of their Peers, such a trial would be called a mockery; and yet the *British* House of Lords, having hereditary privileges, is not dependent upon the Crown, as the *French* Chamber of Peers is, whose Members must be indebted to the grace of the Crown for the renewal of the title of Nobility to their children, and must be correspondingly obsequious and *servile to the KING's Ministers*! We took up this sub-

ject with disgust, and we leave it without regret ; but, odious as it is, it supplies an instructive lesson.—*Morning Herald, Tuesday, February, 23, 1836.*

Case of three POACHERS condemned to death at the Bedford Assizes under the LANSDOWNE ACT, and left for execution.

A sacrifice of three human lives is about to be made in Bedford to the Moloch of the Game Laws. We refer to our Assize report for the particulars. In no other country in the world could a spectacle so repugnant to enlightened justice—so revolting to humanity—be exhibited at the present day.

What is the crime of the three victims of our exterminating law? An assault upon two gamekeepers, who, it appears, themselves committed the first assault, by collaring the poachers. It may be answered that the law allows them to do so. We know it does ; but such a law is a disgrace to the Statute-book. It authorizes gamekeepers to seize persons trespassing in pursuit of game, without requiring that they should previously ask them to surrender peaceably, or warn them off. Such a law must inevitably lead to conflicts and bloodshed. It is the natural impulse of a man, when suddenly seized by the violent gripe of another, to strike the aggressor. The other returns the blow, the blood is up, and, before there is any time for reflection, mischief is done, which, in nine cases out of ten, would not have ensued if the power of sudden arrest was not given to gamekeepers—a class of men, generally speaking, who are selected for their animal powers and hardihood, rather than for any other qualities, to guard the sacred precincts of game preserves against the illicit destroyers of hares and pheasants.

Why, we ask, should such a power be given to such men in this particular description of trespass? It would seem as if the Legislators, who passed the law, wished to *provoke* as much as possible those violent struggles between game-

keepers and poachers, which are so frequently attended by bloodshed, and sometimes with the loss of life. It will be seen from our report that there are two men now in prison at Bedford, charged with the murder of a gamekeeper. Has the law, which is more worthy of a despotic State than a free country, diminished the offence? No, it is increased—and that increase of the crime was, as we perceive, a reason given by Mr. Justice GASELER for ordering the three men at Bedford for execution. He said the crime had of late so much increased that it was necessary to make examples. Thus, notwithstanding the Whig reform of the game laws—notwithstanding Lord ALTHORP'S Bill, which was to have put an end to those desperate conflicts between gamekeepers and poachers, those acts of mutual violence are on the increase; and it becomes "*expedient*" that a number of human beings should be hung up like scarecrows, to terrify poachers from intruding upon the sanctity of the game preserves.

We blame not the Judges or the Juries that administer the law, though we think the former would not discredit themselves by giving a more mitigated operation to the game laws than they generally do. But the responsibility of the crimes which those laws engender rests upon the law makers. They cannot be reached by any human tribunal; but they will yet have to answer, as every Christian must believe, before the JUDGE of all mankind, for the human blood which, under those laws, is most profusely and unnecessarily shed.

We enter not into the details of the trial at Bedford. We object to the law and the punishment *in toto*; and labouring, as we have done for many years, for the thorough reform of our criminal laws, we shall never think that reform completely effected until the present game laws are erased from the Statute-book, along with the LANSDOWNE Act, which is called in to help their deficiency in giving them a more deadly operation. It was under the LANSDOWNE Act, the 9th Geo. IV., the prisoners were tried. That Act is a

new and more sanguinary edition of Lord ELLENBOROUGH'S Act, which rendered a number of misdemeanors capital offences, nearly half a century after Judge BLACKSTONE had expressed his enlightened detestation of the inhuman severity of our criminal code, which in his days made upwards of one hundred and sixty different offences punishable with death—a “black catalogue,” as he calls it, which after his time was increased to upwards of three hundred, no less than seventy-five of these being offences against the Revenue—of them offences merely *mala prohibita*, and not *mala in se*. The civilized world could present nothing like the legislative rage in this country for the extermination of offenders during the last century and the beginning of the present one. We cannot wonder if Judges, educated under such a system, should set that value upon human life which the Legislature had placed upon it, *and no more*.

We understand there are numerous game cases to be tried at the ensuing Assizes for Suffolk and Norfolk. If the Crown should allow the sentence passed upon the Bedfordshire poachers to be carried into effect, the public must be prepared to witness other sacrifices of a similar description ; for it would be a reflection upon “equal justice” to presume that the law is not to be impartially administered, or that in Suffolk or Norfolk, *transportation*, or a certain term of *imprisonment*, will be considered sufficient punishment for an offence that is visited with *death* in Bedfordshire—where, in fact, the snares of death are more thickly laid, considering the great extent of the surface of this small county that is covered with game preserves, than in any other county in England.

The Duke of BEDFORD, Mr. WHITBREAD, Lord ONGLEY, and other landed proprietors in this county, are great preservers of game ; but the evils which the system produces upon the habits of the peasantry are painfully visible at every Assizes. One has but to take up a criminal calendar to observe that the country is thickly sown with game preserves,

and consequently much frequented by poachers. A severe application of the exterminating law never has, and never will, repress those grievances, as long as the great temptation to the offence exists, and allures the unemployed peasant to predatory habits, by constantly presenting itself to him wherever he rambles or turns his eyes.

There is but one circumstance connected with the trial of the three prisoners to which we will particularly call public attention, and that is, the principle upon which the Jury recommended the prisoners to mercy—we advise all law-makers and Judges to keep it in view. “*They had it in their power,*” said the Jury, “*to commit murder, and they did not;*”—yes, they might, if they chose, have silenced the only *witnesses* of their offence for ever, as they had them completely at their mercy; and *their lives* are now to be sacrificed because they *abstained* from steeping their souls in the guilt of a deeper crime. Public morality will certainly not be benefited by such a sacrifice, and public policy forbids it.*—*Morning Herald, Thursday, March 17, 1836.*

* It is satisfactory to us, and will be no less so to the public, to learn that the three poachers, whose case we brought under the notice of Government on Thursday last, as having been convicted and left for execution at Bedford, for wounding a gamekeeper, have been *reprieved*. The death of these men upon the scaffold, as we then remarked, would have been no protection to game preserves, and would have rendered poachers more desperate than ever. They would have been instigated to *commit murder in self-defence!* We should be glad to see some Member of the Legislature give notice of a Bill to repeal the LANS-DOWNE Act, under which these men had been convicted, and to substitute punishments more rational, and more proportionate to the offences embraced by that Act, so that the law no longer might operate as a *bounty upon murder*.

While upon the subject of the criminal law, we are glad to observe by our Parliamentary report, that on Monday night Mr. HUME communicated to the House some information realizing our anticipations as to the effect of repealing capital punishment, and substituting penalties

*Case of two POACHERS convicted at Bury St. Edmunds, under the
LANSDOWNE ACT, of shooting a Gamekeeper.*

In our Assize intelligence will be found to-day another of those cases of violence arising under the game-law system, which are so frequent at the present day, and which, since the pretended *reform* of the game laws, have greatly increased.

The case to which we allude is one in which there was, no doubt, a very serious, and, it might have been, a fatal injury, inflicted by the poachers upon a single gamekeeper of the Duke of NORFOLK, that had detected the two poachers, whose offence was the subject of enquiry, in a pheasant preserve, in the night-time, and who on pursuing them was fired at, and received a dangerous wound in the head, by which he lost an eye, and sustained other severe injuries. But the question in this case was—not the amount of injury, but—the *identity* of the persons by whom it was inflicted.

It will be seen from the evidence that the only proof of the identity of the prisoners was the solitary testimony of the wounded man, whose veracity there was certainly no ground whatever for impeaching, but who had seen the poachers under such circumstances as might well induce a suspicion of mistake, even if the answer, which the prisoners made by their defence to that evidence, had not been as

more certain of infliction. The Hon. Member produced, from Parliamentary Returns, the number of commitments for *horse-stealing*, during ten years, ending with 1834. He shewed that during the first five years, when there were *thirty-seven men hanged* for this offence, 990 commitments took place. In the last five years, during which *not a single execution* happened, the commitments, instead of increasing, as the alarmists had predicted, fell to 966. Here we have statistical proof of the gallows being less efficacious than other punishments in the repression of crime. Mr. HUME emphatically expressed his hope, that ere long no offence, save murder, would be punishable with death.
—*Morning Herald, Wednesday, March 23, 1836.*

complete as it was. It will be seen that the defence went to prove that the prisoners were in another place when the offence was committed, and could not, by any possibility, be the men who were in the preserve in question, at the time the prosecutor was wounded. A false *alibi* is a sort of defence not unknown in Courts of Justice, but it is not, therefore, that an *alibi*, when unshaken, should not be conclusive of the innocence of the parties on whose behalf it is offered. In the present case the *alibi* was wholly unshaken—one might say, rather confirmed on cross-examination; and, if such a defence is not a complete answer to a capital charge, the life of *no poor man is safe against the consequences of false or mistaken accusation.*

It appears that nothing could be more fair and impartial than the conduct of the Learned Judge (Mr. Justice ALLAN PARK) who tried the case, and who gave all due weight to the defence, without dictating to the Jury what their verdict ought to be. We may take it that his Lordship felt grave and serious doubts of the propriety of the verdict, when he took time, in such a case, to consider whether he would pass the sentence.* It is understood that another person on whom suspicion had fallen, is gone out of the way. On the whole, we think that this case ought to be most carefully enquired into, that, as in some former instances, a *fatal mistake* may not be made, and only discovered when its consequences are *irreparable*.—*Morning Herald, Friday, March 25, 1836.*

Case of a woman executed at Liverpool, for poisoning.—

BRUTALIZING EFFECTS of Executions.

* * * That executions, whatever may be the crime, have a bad and brutalizing effect on the class of persons who form

* The convicts were afterwards reprieved by the Learned Judge, who, on the conclusion of the trial, seemed to have doubts that the evidence was sufficiently strong to warrant the conviction.—F.D.

the bulk of the spectators on such occasions, may be shewn by abundant instances. When stealing from the person was punishable with death, the London thieves used to attend the execution of their comrades, to take advantage of the excitement of the tragic scene, and pursue their vocation at the foot of the gallows.*

At Liverpool, only a day or two ago, a new practical proof was given, not only of the uselessness, but the demoralizing influence, of executions. We allude to the execution of the woman named *Betsey Rowland*, convicted of murder on *Thursday*, and hanged on the following *Saturday*. We take from the columns of a morning Contemporary an account of the conduct of the populace, upon whom the awful scene of the scaffold was intended to operate as a great moral example. It appears that there was a mistake as to the time appointed for the execution, which caused the populace of the vicinity to assemble in the morning, but it did not take place until three o'clock in the afternoon. Their conduct is thus described in the report to which we have alluded :—

‘ We never recollect to have witnessed a larger congregation of blackguards at scenes of this shocking nature. During the lapse of time the mob, tired of *amusing themselves* by doing considerable mischief to the fields and gardens in the neighbourhood, commenced an attack by throwing missiles at one another ; and those individuals

* As thieves had been in the practice of doing, from the time that that offence was first made capital in the year 1565, by 8 Eliz. cap. iv. The preamble of the Act complains of the existence of “ a brotherhood or fraternity of an art or mystery that lived idly by secret spoil,” obtained “ as well at sermons and preachings of the word of God,” as at “ the Prince’s palace, &c. ;” “ yea, and at the time of doing of execution of such as have been attainted of any murder, felony, or other criminal cause, ordained chiefly for terror and example.” The framers of this statute, after thus complaining of the inefficacy of the penalty of death, actually annexed it to the offence in question—picking pockets—and it continued unrepealed till the year 1808, when Sir S. ROMILLY’s efforts got it removed from the Statute-book.—ED.

‘ of a better *caste* in society, although it cannot be said of a better *taste*, were sure to come in for the most liberal share. A detachment of the police force, under the command of Mr. Whitty and Inspector Heaton, were on the spot, and with the utmost difficulty preserved the pockets of the people. Thus were the schemes of depredation pursued at the foot of the gallows. The police left the ground about nine o’clock in the morning; but no sooner had they turned their backs than a ruffianly gang of scoundrels, instigated by their vile propensity for thieving, made an attack on the females (of whom we regret to say there was a large sprinkling), tearing away their tippets, shawls, bonnets, and other articles of dress convenient to carry away. Many of the females took refuge from the villains in the gaol, and were let through the Court House at the other end of the building.’

Here was a moral example! As to the females who had tippets and shawls to lose, we can hardly pity the treatment they received for being in such company, and on such an occasion. They went to the place of execution to enjoy a horrible pleasure in witnessing the dying agonies of a fellow-creature; and, though strangling of the criminal had no beneficial effect upon the multitude, we trust that *their* punishment will operate as a salutary example, and prevent them from attending such brutalizing exhibitions in future.

With respect to such spectacles, a Paris Correspondent of another Journal—the *Morning Chronicle*—had some time ago the following observations:—

‘ Oh! if the people of England did but know one-thousandth part of what is said and thought throughout civilized Europe of these periodical executions in London, and at the country Assizes, I cannot but think they would demand the abolition of capital punishments with the same unanimity and energy as they now display for a reform in Parliament. On a recent occasion, at a town in France, when a man, a criminal deserving solitary imprisonment for life, was ordered to be executed, on the morning of the day all the shops and houses were closed, the streets were deserted, and no one assisted at the execution but the public executioner and the officers of justice.’

Here the example was lost, for there were no spectators for the example to operate upon! Since that time Louis

PHILIP, contrary to his former professed abhorrence of the punishment of death, has been endeavouring to reconcile the French people to the use of the *guillotine*. In that respect, as PHILIP *l'Egalité* did, he may go too far, and see his error too late. In Surrey, there was an execution yesterday which might well have been spared. Are our Whig Ministers as anxious to return to the old system of "improving" the people's morals by the lessons of the public executioner as the King of the barricades?

With regard to the guilt of the woman executed at Kirkdale it appears to be by no means clear. The poor creature had *no Counsel* on her trial. There was no doubt, indeed, of the fact that she put arsenic instead of sugar into her husband's gruel. It was not the *fact* that was in dispute, but the *intention*. She asserted on her trial, and persisted in that statement in her dying moments, that she mistook the arsenic for sugar—a mistake which, under the circumstances, was, at least, possible. The reporter says,—

'She did not deny that subsequently to his death she discovered her mistake, but did not mention the circumstances to any individuals for fear of the consequences. This she solemnly declared to be the fact to the Rev. Mr. HORNER, stating at the time, that as she knew she was about to be hurried before her GOD, and having partaken of the holy communion, in earnest truth of her assertions, it was not likely she would die with a lie in her mouth.'

We do not say whether she was, or was not, guilty of the dreadful crime of which she was convicted. On reading the report of the trial we thought the case a very doubtful one. If *subsequent enquiry* could do any thing towards clearing it up, it was prevented by that disgraceful—that truly barbarous law, which ordains, that a person convicted of murder—the very suspicion of which causes more prejudice than any other crime, shall be executed *within forty-eight hours!**—*Morning Herald, Tuesday, April 12, 1836.*

* By reference to pages 329, 333, it will be seen that an Act was passed in this Session of Parliament to put an end to the disgraceful

Reform of the Penal Code in SAXONY.—CAPITAL OFFENCES.

The following article has already been published in a Contemporary Journal.* It shews that the Penal Legislation of Saxony has partaken of that spirit of improvement which has recently been observed in several of the Continental States, and is the result of the advancing civilization of the age. It will be seen, that by the new code, the penalty of death is reserved only for very few crimes indeed, and those of the most atrocious description [crimes, it may be added, involving the destruction of human life, in nearly every case]. Will England, that ought to have led the way, be content to be for ever behind other civilized nations in the important science of criminal jurisprudence? —*Morning Herald, Tuesday, April 19, 1836.*

(FROM THE GERMAN PAPERS.)

The Government of Saxony is engaged in the formation, or rather the revision, of a new Penal Code.

The punishments are *death*; the *house of correction* in the *first* degree—(i. e. for life, and for a certain time up to 20 years); the house of correction in the *second* degree (15 years at the most); the *workhouse* (up to 10 years); *imprisonment, labour, fine, reprimand*. As aggravation, corporal chastisement may be inflicted, but not more than 30 lashes, and only on males; weak persons and females, instead of corporal punishment, may be punished by depriving them of warm food every other day. Criminals under 18 years of age cannot suffer any more severe punishment than confinement in the *workhouse*. Persons cannot be called to account for crimes after the lapse of 15

precipitancy of the law which ordained the execution of a murderer within forty-eight hours after conviction. The Act, which was Mr. AGLIONBY's, came into operation July 14, 1836, and was the means, in the very first case tried in *England*, of saving a man from death, whose conviction was founded on mistaken evidence as to his identity. We refer to the well-known case of *Edmund Galley*, tried at the Exeter Assizes, Thursday, July 28, 1836.—ED.

* *The Times*, of April 15, 1836.

years, except in the case of those to which the penalty of *death* is attached, and which are the following :—

1. *High Treason*, including attacks on the independence and constitution of the German Confederation.

2. *Murder*.

3. *Arson*, but only—when an inhabitant *has perished*, or been *muti- lated*, and the result might have been foreseen ;—when fire is set to several places at once ;—when several persons have combined together to commit arson ;—when the criminal has rendered the means of extin- guishing the fire useless (cutting the hose of the engines, &c.)

4. *Perjury*, if an *innocent person has suffered death* in conse- quence.

5. *Robbery*, when the person robbed *dies* in consequence of the injury done by the violence inflicted on him.

6. *Duelling* to be punished with imprisonment for various periods, from two months up to 20 years, according to the case—*vis.* from 5 to 20 years when one is killed, and it was previously agreed to fight till one fell ; from three to six years when one falls without such pre- vious agreement ; from two months to one year when neither party is dangerously wounded.

Cases of relapse are punished at the discretion of the Judge, with, at the most, the double of the legal penalty. In general much scope is left for the discretion of the Judge.

Danger to INNOCENCE from the precipitate execution of the sentence in cases of MURDER.—Mr. AGLIONBY moves for a Bill to alter the law.

This evening Mr. AGLIONBY, pursuant to notice, moves for leave to bring in a Bill to repeal that cruel and barbarous provision of our law, which ordains that a person convicted of murder shall be executed *within forty-eight hours*. This enactment never could have existed, if the Legislature did not sometimes consult passion rather than reason, in making laws against crime.

An accusation of *murder* naturally causes great prejudice to exist against the person who falls under the suspicion of so dreadful an offence ; consequently, there is more danger

of a prejudiced decision in such a case, than in regard to other charges of crime, which do not produce such excitement in the public mind. Hence a greater hazard of *innocent blood being shed by the sword of the law*.

However doubtful the evidence may be upon which a person charged with murder is convicted, no time is allowed for further enquiry. In matters of *property*, one Court of appeal may be resorted to after another; but, where *human life* is concerned, our system of criminal jurisprudence allows of *no appeal* whatever. It is true the Judge may stay the execution if he thinks there is sufficient ground for it; but it rests entirely within his own breast whether he will, in any given case, exercise that discretionary power, or not. *Cases have occurred* where life has been sacrificed, and where subsequent enquiry might have corrected a fallacious judgment, and averted a fatal mistake.* Definite law is better than discretionary power, whether to protect innocence, or to punish guilt.

Again, let us suppose the person convicted so clearly guilty of the crime that no doubt can be entertained about it. Even in that case why should the wretched being be hurried out of existence without allowing any time for that religious preparation, which, as Christians, we ought not to deny to the most guilty of mankind?

The advocates of the law say it was passed for the purpose of making *speedy examples* in cases of the most heinous

* The instance of *Edward Poole Chalker*, tried at Bury St. Edmunds, upon *Friday*, March 27, 1835, and executed upon the *following Monday* at Ipswich, is one of the most recent of the kind. We have hitherto abstained from alluding to the case, with a view not to increase the local excitement; but we shall not pass over this opportunity of stating our unshaken belief, founded upon evidence of the most conclusive nature, and obtained by persevering exertions in the county, that *Chalker's innocence*—protested with his dying breath—was not a mere assertion. Perhaps at some future time we may let the public know our grounds for this belief.—ED.

crime. But, to carry this principle out to its full extent, the *trial* should take place *immediately after the crime*, or, at least, the moment any person is charged with it. Instead of that, the accused may lie several months in prison, and be then brought to trial. If the punishment of death be a salutary and a moral example, which we deny, will the addition of a few weeks to the existence of a condemned fellow-creature make that example less powerful?

Speedy examples of barbarity never did, and never will, improve mankind. What moral effect had the execution of that wretched woman, who was hanged at Kirkdale,* on the crowd, that around the scaffold exhibited the most disgusting levity, and perpetrated acts of violence and depredation? Let us legislate against crime like a Christian people, and forget not that without religion, justice degenerates into revenge.—*Morn. Herald, Tuesday, April 26, 1836.*

The success of Mr. AGLIONBY'S Bill to amend the law of MURDER.

Mr. HUME and Mr. LENNARD prove from Official Returns a considerable DIMINUTION of crime in cases that had ceased to be capital.

The cordial reception given to Mr. AGLIONBY'S motion last night in the House of Commons shews that the day of exterminating punishments is fast drawing to a close. The Hon. Gentleman's motion, indeed, was confined to the single object of putting an end to the intemperate precipitancy of a law which ordains that persons, convicted of murder, shall die *within the next forty-eight hours*—a law which has, not unfrequently, occasioned the immolation of an *innocent* victim: but the short discussion which arose upon it, furnished an opportunity for communicating some most important information to the House.

Upwards of three years have now elapsed since the Legislature abolished the punishment of death for several offences,

* *Ante*, p. 326.

and both Mr. HUME and Mr. LENNARD last night availed themselves of the occasion to prove, from statistical facts, the beneficial effects which have resulted. This they did by reference to abstracts of Parliamentary Returns, shewing that a great deal of blood had been shed upon the scaffold, not only uselessly, but with positive injury, as appeared by the consequent *increase* of the crimes *so punished*.

Mr. HUME demonstrated, that while in three years ending with 1829 no fewer than 42 persons had been put to death in *Middlesex*, and in three years ending with 1835 only *one* person had undergone that punishment for the same offences, the substitution of rational and *more certain* penalties, in the latter period, had brought with it a *diminution* in the commitments, the number having fallen from 672 to 649.*

On the other hand, Mr. LENNARD proved a similar result with regard to the *eight circuits* of England, where, in the first-mentioned period of three years, 54 convicts had suffered death for the crimes referred to, but in the last-mentioned period only *one* execution had been permitted by the Judges, and the number of commitments had fallen from 3,950 to 3,643.† For other particulars we refer to our

Diminution of crime in ENGLAND and WALES resulting from the discontinuance of capital punishments, and the substitution of *more certain* penalties—in the cases of coining, forgery, horse-stealing, sheep-stealing, five-pound larcenies in dwellings, house-breaking, and burglary :‡—(Extracted from Parliamentary Returns)—*vis.* :

* LONDON AND MIDDLESEX.	<i>Executed.</i>	<i>Committed.</i>
Three years—1827, 1828, 1829	42	672
Three years—1833, 1834, 1835	1	649

† UPON THE EIGHT CIRCUITS.	<i>Executed.</i>	<i>Committed.</i>
Three years—1827, 1828, 1829	54	3,950
Three years—1833, 1834, 1835	1	3,643

‡ Burglary is still nominally capital.

Parliamentary report. It is highly satisfactory to observe our anticipations so completely realized.—*Morning Herald*, Friday, April 29, 1836.

[Mr. AGLIONBY's Bill was passed by both Houses, and enacted July 14, 1836, being 6 & 7 Will IV., cap. 30. See note, p. 334.—ED.]

Three men in Ireland tried for MURDER, and EXECUTED under the old law, which had been altered in time for the Judges on the Circuits to have been officially apprized of that alteration of the law.

In our observations upon the case of the man, executed at Winchester the day subsequent to that on which the Royal Assent was given to Mr. AGLIONBY'S Bill, we should have said "Wednesday week," instead of "Wednesday last." Let us take this opportunity of stating that the Bill applies to Ireland, and that by the last accounts from the Assizes in that country, it did not appear that the Judges were aware of its having become a law, as the following facts will shew.

At Clonmel, on *Thursday* last, July 21, two men, named *Patrick* and *Peter O'Brien*, were convicted of murder, and sentenced to be executed on *Saturday*, the 23d.* Next day,

* The *Dublin Evening Post* gave the following account of the execution of the two *O'Briens*. As the grave so quickly closed upon them, we presume the question of their guilt remains in that state of painful uncertainty which was apparent among the spectators, and which is so lamentably calculated to undermine public confidence in Courts of Justice.—ED.

' EXECUTION IN CLONMEL.

' On *Saturday* [23d July,] *Patrick* and *Peter O'Brien* were executed for the murder of John Malone, Steward of Mrs. Finch, near Nenagh. All along they have declared their perfect innocence. When Chief Justice DOHERTY pronounced sentence of death, on *Thursday*, one of the prisoners exclaimed—"Well, now the sentence is pronounced, and as the Almighty God is over us, we are innocent."

' The JUDGE—I hope your meaning is, that yours was not the hand that struck the blow; but you are equally guilty by being one of the party who did the deed.

(*Friday*,) *Daniel Ryan* was convicted of the same offence, and sentenced to be executed on *Monday*, the 25th. As the Act received the Royal Assent upon the 14th of July, it ought to have reached the Irish Judge on circuit on the 17th—that is, several days prior to the above-mentioned trials at Clonmel.

These three men have been executed according to a law *no longer in existence when they were tried and sentenced*. A question ought to be put to Lord John RUSSELL [Home Secretary] on the subject in the House of Commons.—*Morning Herald*, Thursday, July 28, 1836.

Mr. EWART introduces a Bill to alter the practice with regard to the Proof of a PREVIOUS CONVICTION, on a trial for felony.*

We are glad to find that Mr. EWART, who has already deserved well of the country for his efforts to improve the

‘The PRISONERS—My Lord, we were not with the party either.

‘The JUDGE—Remove these unfortunate men; I do not wish to have this awful scene prolonged.

‘To the last moment, when no possible hope of respite existed, they firmly, yet with great resignation, repeated their protestations of innocence of the crime for which they suffered. The greatest sympathy for them prevailed amongst the vast crowd assembled to witness the melancholy spectacle.’—*Dublin Evening Post*.

We have elsewhere mentioned (p. 328), that in the very first trial, in England, of a charge of murder, under Mr. AGLIONBY’s Act, which took place at Exeter, July 28, 1836, one of the prisoners, *Edmund Galley*, was convicted upon mistaken evidence as to his identity—and yet the witnesses in Court appeared to feel confident upon that point. The passing of the Act gave time for an investigation, which was most humanely but judiciously undertaken by Mr. FAULKNER, Solicitor, of London, who succeeded in demonstrating that *Galley* was in a distant county at the time of the murder, and thus his life was saved.—ED.

* It is due to Mr. PARKER, the Member for Sheffield, and now one of the Lords of the Admiralty, to state, that by the Journals of Parliament, it appears he gave notice in 1833 of a Bill for a similar purpose. Why it was not persevered with, we have not heard.—ED.

criminal law both in theory and practice, has given notice of a motion to alter the law which allows the fact of a *previous conviction* of a prisoner, to be given in evidence to a Jury—*on the case before them*. Impartial and dispassionate justice demands that such alteration should take place.

The practice of giving in evidence the fact of a previous conviction—*while the prisoner is under trial* upon a subsequent charge—is itself an innovation of very recent date, but certainly not an improvement. Every case tried in a Court of Justice should stand or fall upon its own merits, and the decision of the Jury should be the impartial and dispassionate conclusion from the evidence in each particular case; but, how can the mind of the Jury be unbiassed against a prisoner, if the fact of a *previous conviction* be allowed to form *part of the evidence* upon a charge wholly distinct? This modern innovation upon the law sins against the very first principles of British justice.

Such a practice was unknown to the law until introduced by one of Sir Robert PEEL'S Acts, the 7th and 8th Geo. IV., cap. 28, in the eleventh section of which Act it is thus provided,—

‘ And whereas it is expedient to provide for the more exemplary
 ‘ punishment of offenders who commit felony, whether such conviction
 ‘ shall have taken place before or after the commencement of this Act,
 ‘ be it therefore enacted, that if any person shall be convicted of any
 ‘ felony not punishable with death, committed after a previous conviction
 ‘ for felony, such person shall, on such subsequent conviction, be
 ‘ liable, at the discretion of the Court, to be transported beyond the
 ‘ seas for life, or for any term not less than seven years; or to be
 ‘ imprisoned for any term not exceeding four years, and, if a male, to
 ‘ be once, twice, or thrice, publicly whipped (if the Court shall so
 ‘ think fit), in addition to such imprisonment; and in an indictment
 ‘ for any such felony committed after a previous conviction for felony, it
 ‘ shall be sufficient to state that the offender was, at a certain time and
 ‘ place, convicted of felony, without otherwise describing the previous
 ‘ felony, and a certificate, containing the substance and effect only,

‘omitting the formal part of the indictment and conviction for the previous felony, purporting to be signed by the Clerk of the Court, or other officer having the custody of the records of the Court where the offender was first convicted, or by the deputy of such clerk or officer (for which certificate a fee of 6s. 8d., and no more, shall be demanded or taken) shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same.’

As long as the above enactment remains the law of the land, we hold it to be impossible, or next to impossible, that any prisoner charged with felony, however groundless the charge may be, can obtain a fair trial if he should have been at any former time convicted of a similar offence. Let us suppose a case, by no means improbable, that of a person who had formerly been convicted, and properly convicted, upon a felonious charge, not punishable with death, and who had become a reformed person, but against whom a second charge, founded in *malice* or *ignorance*, is brought. How is it possible for such a person to obtain a fair trial with the fact of the previous conviction stated—the indictment and the evidence of that fact *mixed up with the evidence* upon the charge then before the Jury? We cannot conceive the minds of a Jury unprejudiced by such a mode of proceeding. However deficient the proof of the charge before the Jury is, the certificate of the former conviction comes in to supply that deficiency of proof, and to cause the accused to be punished a second time for a former offence.

As far as depends upon the wording of PEEL'S Act, it seems doubtful whether it was intended by the Legislature that the certificate of a former conviction should be given in evidence *before* or *after* the trial for the latter offence. The requiring it to be stated *in the indictment* that the prisoner was previously convicted, seems to favour the judicial construction put upon the Act, that the certificate ought to be

given in evidence *before* the second verdict. So contrary to the first principles of justice, however, did this mode of proceeding appear in the first instance, that some Learned Judges would not allow the certificate to be given in evidence until *after* the second trial, when, if the prisoner was convicted, its production authorized the additional punishment according to the Act. Some Sessions also refused to sanction the practice of mixing up the proof of a former conviction with the charge under trial. If we recollect, the Warwick Sessions insisted that this proof, which was only intended to aggravate the punishment, should be kept back until the Jury had, upon their proper evidence of the case, returned a verdict of guilty.

At length the Judges resolved to introduce a uniformity of practice in this respect, and decided, we believe, with two dissentients, that the Act required the production of the certificate *before* the close of the second trial. This construction so put upon the statute, has made the practice, which was before doubtful, the law of the land. We think we have said enough to shew, that for the sake of the impartial and dispassionate administration of justice, no provision of our criminal law more requires alteration. We would advise Mr. EWART to propose the repeal of the practice, not only in regard to the production of the certificate in evidence, but also as to introducing the subject in the indictment.—*Morning Herald, Thursday, June 9, 1836.*

[Mr. EWART's Act was passed by both Houses, and was enacted August 20, 1836, being 6 & 7 Will. IV. cap. 111.]—ED.

Mr. Sergeant JACKSON presents a Petition to the House of Commons from a Committee of the SOCIETY OF FRIENDS in Ireland, praying for the ABOLITION of Capital Punishment.

The petition presented to the House of Commons on Monday last, by Mr. Sergeant JACKSON, from a Committee

of the SOCIETY OF FRIENDS, in Ireland,* praying for the abolition of the punishment of *death*, is only another of the instances which continually occur of the growing opposition of public opinion to a species of punishment which revolts the best feelings of mankind, without producing any beneficial consequences to society.—Without producing beneficial consequences did we say? The reverse is proved to be the fact. The tabular statistics of crime and punishment which we have from time to time published, shew that where the punishment of death is most in use, heinous and flagrant crimes are most frequent, as if the allwise PROVIDENCE that created and that governs the world, had ordained that when justice degenerates into vengeance, penal legislation itself shall become the prolific parent of crime.

The statistical statements to which we allude have made, as we have reason to know, a deep impression upon the minds of that class of persons who doubt not the *right*, as well as the *power*, of Legislators to enact that human life shall be forfeited for any, or for every crime, and who, consequently, pronounce the laws against crime to be good or bad, according to their *practical results alone*. The persons signing the petition presented by Sergeant JACKSON are *not* persons of that class; nevertheless, we find in their petition the following passage :

‘Your petitioners appeal with confidence to the result of the
 ‘ recent ameliorations in the criminal laws of this empire, as well as to
 ‘ the experience of other States, in which the punishment of death
 ‘ has been wholly, or in a great measure abolished, as affording the
 ‘ most conclusive proof that crime may be *successfully repressed*
 ‘ without resorting to this dreadful alternative. They submit, there-
 ‘ fore, that it cannot be defended on the ground of *necessity*.’

Now, the petitioners, although having a higher motive for objecting to the punishment of death than that which

* A copy of the Petition will be found in the parliamentary report of the *Morning Herald*, June 14, 1836.

resolves itself into a question of mere *expediency*, are right in availing themselves also of the argument derivable from the *experience* of its effects. But they go farther than merely asserting that the laws which exterminate offenders do not repress crime—they say, and experience also testifies to the truth of that proposition, that such laws have in reality a demoralizing effect—of course, the very opposite effect to that which would flow from good laws, whose influence ought to be corrective of the evil habits and practices of the vicious portion of society. They say

‘Your petitioners regard the public execution of criminals as demoralizing to the community. They believe that the tendency of those scenes, by familiarizing the spectators to the destruction of human life, is, to harden the heart, and to multiply crimes attended with violence. These effects, they believe, may be distinctly traced in districts where the punishment of death is of most frequent occurrence.’

In addition to which they state, what has always struck us as a very strong objection to giving weak and erring man a power over the life of his fellow-man, that

‘The *fallibility* of all human tribunals furnishes an insurmountable objection to a punishment irremediable in its nature, and so awful in its consequences as DEATH.’

The word “awful” suggests another consideration far more important—far more worthy the attention of *Christian* Legislators than the saving or extinction of animal life. It is impossible for a really Christian community to deal with a question involving the life or death of man, as a question from which all religious considerations should be excluded. Interests of infinitely more importance than those which perish with our animal nature are involved in that question—because the destruction of life is but the entering on eternity.

Impressed by the principles, and animated by the sentiments which the Christian religion teaches, the petitioners proceed to plead for the abolition of the punishment of

death, on—what they rightly state to be—the highest ground that can be assumed. They say they are conscientiously persuaded that, under the CHRISTIAN Dispensation, the punishment of death ought to be unknown :—they add that they

‘ Are strongly impressed with the obligation that devolves on a
‘ Christian State to be guided in its legislation by the principles of the
‘ Gospel ; and, as subjects of the realm, deeply interested in its well-
‘ being, they fervently desire that the blessing of the MOST HIGH
‘ on the institutions of their country may be sought, by endeavouring
‘ to make them in all things conformable to the Divine law.’

Believing the rule here laid down with regard to one branch of legislation to be the true criterion of sound policy in regard to national Government in general, we have only to add our sincere and fervent hope that our Legislators, in the exercise of their power, may not forget that they are responsible to HIM from whom all power is derived.—*Morning Herald, Wednesday, June 15, 1836.*

Lord LYNTHURST undertakes the conduct of the PRISONERS' COUNSEL BILL in the Lords.

It affords us no small gratification to find that the Prisoners' Counsel Bill is to be disinterred from the oblivion which the opponents of equal justice had prepared for it, and that Lord LYNTHURST has undertaken to introduce it to the House of Lords for the Second reading this day. We are well aware of the attempts which were made last Session to “cushion” this Bill in the House, where Lord LYNTHURST is so distinguished a leader, and which attempts were then but too successful. (*Ante*, p. 78.)

It is impossible that equal justice can be afforded to a prisoner, unless he is allowed to make his full defence, by Counsel, in answer to the full accusation made by the Counsel for the prosecutor. As to time, a great deal is now consumed in irregular cross-examination, which would be

saved if the Prisoners' Counsel Bill became a law. But the real question is not one of convenience or inconvenience, but of *justice* or *injustice*; and prisoners, charged with felony, cannot have justice unless allowed to make their full defence by Counsel.—*Morning Herald, Thursday, June 16, 1836.*

Lord LYNTHURST moves the Second reading of the PRISONERS' COUNSEL BILL in an eloquent Speech in the House of Lords.

The success of the Bill, to enable prisoners charged with felony to make their full defence by Counsel, now seems to be placed beyond a doubt—such a cause, taken under the protection of the splendid talents of Lord LYNTHURST, cannot fail to be triumphant. On the anticipated result of the Noble and Learned Lord's advocacy we may congratulate the friends to the improvement of the administration of justice. An anomaly, cruel in principle and barbarous in origin, will be removed from the practice of our criminal system, and life and liberty, in questions chiefly affecting the *poor*, will no longer be deprived of the protection, which is thrown round *property* by the precautionary wisdom of British law.

The admirable exposition which Lord LYNTHURST gave, in his speech in the House of Lords, of the past and present state of the law as to prisoners charged with felony, makes it needless for us to enter at any great length into the question, more especially as we have on former occasions, during the successive years in which we have advocated this measure, taken no small pains to set the public mind right upon this subject. Nor have we spoken as theorists on this or any other branch of our system of criminal jurisprudence, the reform of which we have pressed on the attention of the Legislature and the country—we have closely observed the practical working of the system. We have, we trust, temperately, but, at the same time, fearlessly,

exposed its defects, whether of principle or practice ; and now we have the satisfaction to say, that of the many important improvements which we have recommended, a considerable number have become law, and the rest are in assured advancement towards final success.

The speech of Lord LYNDEHURST made a powerful impression on the House, where so forcible and lucid an exposition of the absurd and cruel anomaly which the Prisoners' Counsel Bill is intended to remove, was never before given. Well did he shew how the practice, in regard to prisoners triable for felony, had been softened down from its first unmitigated injustice, when neither witnesses could be examined nor Counsel employed, even to take points of law for the prisoner, to its present qualified injustice, when an enactment, that would allow the prisoner to address the Jury on the evidence by his Counsel, would sweep away "the last relic of a barbarous system."—*Morning Herald, Saturday, June 25, 1836.*

The PRISONERS' COUNSEL BILL read a Third time in the Lords—the Duke of RICHMOND moves the reinserion of an expunged Clause.

It is unnecessary for us to say how much we rejoice in the success which has attended the Prisoners' Counsel Bill, because we have advocated its principle so long, and urged its adoption by the Legislature so frequently, that the public must be aware the triumph of that principle, which is now secure, is to us a source of no common gratification. We say the *principle*, for we do not approve of the alteration in details which the Bill has undergone, more especially that which gives to the prosecutor's Counsel the advantage of two speeches to one for the prisoner, in cases wherein evidence is adduced for the defence. We prefer the Scottish system, as the more reasonable and just, according to which the whole of the evidence for the prosecution is first

presented to the Court and Jury, then the evidence for the prisoner, next the speech of prosecutor's Counsel, and, lastly, the speech of prisoner's Counsel upon the whole case: thus the balance of justice is held exactly even as to advocacy, while the prisoner's Counsel, as is but just to the party accused, has the *last word*.

We trust the Duke of RICHMOND will persevere in his intention of moving that the clause, which provided that *copies of the depositions* should be furnished to the prisoner before trial, shall be reinserted. Every prosecutor should be able to prove his case by its own strength, and not by undue advantages taken of the prisoner; and we say undue advantages are given to the prosecutor by a system which denies to the accused an inspection of the indictment, and a copy of the depositions before trial. We argue not on behalf of one party or the other, but in support of the principles of equal and impartial justice. It is only when the provisions of a law are *just*, that we can recognise it as the work of a wise Legislature.—*Morning Herald, Monday, July 18, 1836.*

[Mr. EWART'S PRISONERS' COUNSEL BILL, *having been discussed in four successive sessions of parliament, was passed into a law, the House of Commons adopting the "Amendments" of the Lords. It received the Royal Assent Aug. 20, 1836, and came into operation at the different October Quarter Sessions. (6 & 7 Will. IV. cap. 114.) As to its practical working, see some remarks in an article inserted in this Volume, (post, p. 359,) under date October 31, 1836.—ED.*]

Singular "Order of the day," issued at ST. SEBASTIAN, creating a new species of High Treason in reference to British Subjects.

In our Spanish correspondence of yesterday we published the copy of a document, purporting to be an "Order of the day" of Lieutenant-General DE LACY EVANS, "Commander-in-Chief of the Corps of the Army on the Cantabrian Coast," which Order of the day contained the following passage:—

‘ The Commander-in-Chief deems it expedient to remind the troops, that, as the Legion is now acting in concert with the English Royal Marines, *all* British subjects who shall be found with arms in hand, aiding or assisting the insurgents, will be considered as *rebels to His Majesty THE KING OF ENGLAND*, and liable to the *penalty of DEATH*, which they shall undergo agreeably to the English law, *in the event of their being made prisoners.*’

As our Correspondent states that he translated the Order of the day of which the above passage is an extract, from the *Spanish*, it is possible that it may be a Spanish fabrication. Most assuredly the Commander-in-Chief of the corps of the army on the Cantabrian coast would have issued his death-denouncing notice to English subjects in the English language. Few English soldiers, we believe, read Spanish. The vigour with which the flogging system is carried on in General EVANS’s army shews that the Legion has learned more of the vices of the country than of its literature. It is probable, therefore, that if General EVANS promulgated such an Order of the day as that in question, he wrote and published it in English. Not having seen the original ourselves, but only a translation of what purported to be a Spanish copy of that document, there is some room for hoping that it may be a forged and fabricated document.

But, if it be a genuine document, then, of all the blunders that the gallant Commander-in-Chief of the British Legion has committed since he landed with his Westminster grenadiers upon the “ Cantabrian coast ” to exterminate the Carlists, the greatest is this atrocious Order of the day. It is a blunder that comes in the shape of a discovery—the discovery of a new species of high treason ! * * *

Some time ago a British subject [Mr. BOYD] was murdered in Spain by a person who was a subject of the King of SPAIN. We thought it the duty of our Secretary for Foreign Affairs to demand that the culprit should be tried and punished for that offence according to the laws of Spain. No such satisfaction was demanded. Afterwards the culprit

[General MORENO] came to this country, and it was said he could be tried and punished here *according to our laws*. Two lawyers gave opinions to that effect. We denied that they had taken a correct view of the law, and said that no subject of an independent State is triable *here* for the murder of a British subject within the dominions of that independent State. But different is the case of one British subject murdering another in a foreign country. For such a case as that our law has expressly provided, and the offender may be tried at the Old Bailey just the same as if the crime had been committed within the jurisdiction of that Court. Now, suppose General EVANS acted upon his own Order of the day (if it be his Order), and put to death a British subject taken in arms for Don CARLOS—if he would not be triable for murder at the Old Bailey, whenever he returned within the jurisdiction of the Court, we very much mistake the law of England.

If, in so putting a British subject to death, General EVANS acted in pursuance of instructions from Lord PALMERSTON, holding as we do that the offence would be murder, we must, in that case, consider the Noble Secretary as placing himself in a very awkward position. But we cannot believe that any British Minister would involve his own character, or that of the KING's Government, in the guilt and folly of a proceeding so cruel, illegal, and unprecedented. We, therefore, doubt that any such Order has emanated from General EVANS or Lord PALMERSTON, or if there has, we cannot believe that the former will dare to act upon it. If he does, he places himself in a most perilous situation, when the relatives of the victim demand of British justice an inquisition of blood.

It is dreadful to think of the demoralizing effects of this Anglo-Spanish expedition upon British subjects. In a war in which both parties most generally butcher their prisoners in cold blood, no Englishman ought to have taken any part. It is a war that would disgrace by its inhumanities the

savages of the wilderness; and we cannot but think our rulers—the present Ministers—deeply responsible for the murder of British subjects, who have been encouraged, by the acts of Government, to enter into a conflict with which the English people have no concern, as well as for the massacre of those Carlists on whom our ships of war have fired, not only without a declaration of war, but in the teeth of the most positive professions of uninterrupted peace.—*Morning Herald, Tuesday, July 5, 1836.*

“*Order of the day*” at ST. SEBASTIAN—*Controversy with a Ministerial Writer continued.*

The *Morning Chronicle* returns to the subject of the “*Order of the Day*” by General EVANS, and to what passed in the House of Commons when Lord PALMERSTON was questioned in reference to the authenticity of that document by Sir Robert PEEL. Let us take the latter topic of dispute first in order.

The *Chronicle* denies that we are correct in stating that Lord PALMERSTON admitted the authenticity of the document in question. To set this matter at rest, we refer to that part of the Parliamentary report which related to the point in dispute. It will be seen that Sir Robert PEEL alluded expressly to the copy of the Order which had been published in the London newspapers. That which appeared in our columns had been published only the day before; and on the morning of the day when Sir Robert PEEL brought it under the notice of the House, we remarked upon it in such terms as the extraordinary nature of the document called for.

Let the reader mark the answer of Lord PALMERSTON, and see if it can bear any other construction than that he believed the document to which Sir Robert PEEL referred—the document which appeared in our Paper on the day

before, and was repeated in other newspapers on that day—to be authentic. He says he has seen the document alluded to; and if the Right Hon. Baronet questioned him as a *Minister of the Crown*, he had no information to give respecting it, for *as such* he could not possess any. But if the Right Hon. Baronet asked him *as an individual*, whether *that Order* had been issued, he was bound to say, *he believed such Order had been issued*. If by these words Lord PALMERSTON did not mean to express his belief that the particular document alluded to by Sir Robert PEEL was authentic, he must, indeed, use language in a sense so different from its ordinary acceptation, that, to persons not provided with a Palmerstonian glossary, it must be perfectly unintelligible.

The *Courier* of last night has, however, undertaken to furnish the public with the accurate copy of the genuine document; and, unhappily for the "unquestionable authority" on which the *Chronicle* relies, the version given by the *Courier* is substantially, and indeed almost *verbatim*, the same as that which we originally published, and which most deservedly excited the public indignation. The case of the *Chronicle*, and, in fact, of all the defenders of General EVANS is, that the real order of the day *applied only to deserters*. We have already stated that *that* would not alter the criminal responsibility of General EVANS, if, upon a charge of desertion, he put any British subject to death; but letting that pass at present, we confidently ask the public whether a document which contains the following passage, as given by the *Courier*, is not essentially the same with the one on which we have commented, and which denounced *death to all* British subjects *taken in arms* for Don CARLOS.

Here are the accurate words of the document as given by the *Courier*:—

' Extract of the General Order, dated St. Sebastian, June 18, 1836.—The Lieutenant-General thinks it best to remind the troops, that as we are now acting in complete conjunction with the British

‘ Marine forces, *all* British subjects found in arms, or aiding or abetting in any way the insurgents, are in fact *rebels against the BRITISH SOVEREIGN*, and are liable to, and will *most probably* suffer, if taken, ‘ the punishment of DEATH by the British laws.’

The following is the copy of the same passage, as furnished to us by our Spanish Correspondent, and published in the *Herald* on the 6th instant, and in the *Times* on the day following:—

‘ *The Commander-in-Chief* deems it expedient to remind the ‘ troops, that, as the Legion is now acting in concert with the English ‘ Royal Marines, *all* British subjects who shall be found with arms ‘ in hand, aiding or assisting the insurgents, will be considered as ‘ *rebels to His Majesty THE KING OF ENGLAND*, and liable to the ‘ *penalty of DEATH, which they shall undergo agreeably to the English ‘ law, in the event of their being made prisoners.*’

On Thursday last we published the same passage, omitting the preliminary part, in the following words:—

‘ That as the Legion is now acting in concert with the English ‘ Royal Marines, *all* British subjects who shall be found with arms in ‘ hand, aiding or assisting the insurgents, will be considered as *rebels ‘ to His Majesty THE KING OF ENGLAND*, and be subject to the ‘ *penalty of DEATH*, which in all probability will be put in force, ‘ *according to the laws of England.*’

It will be seen that the “ authentic copy,” as given by the *Courier*, differs in nothing material from that published by us on the 6th, and by the *Times* on the 7th, than in calling EVANS the “ Commander-in-Chief,” instead of the “ Lieutenant-General,” and in the introduction of the words, “most probably,” as applied to the infliction of the penalty of death. The version which we published on Thursday had the words “ in all probability ;” but those words do not at all alter the law as laid down in this document, or its exterminating principle. It reserves to the Lieutenant-General what THE KING OF GREAT BRITAIN possesses by his prerogative, a discretionary power as to the infliction of the punishment of death on rebels, whose lives the law delivers into his hands.

When Sir Robert PEEL questioned Lord PALMERSTON on the subject, he said—

‘ This document professed to state that the British auxiliary Legion was acting in union with the British naval force, serving under the orders of His MAJESTY’S Government ; and that, on that account, *all* British subjects who might be found serving in the forces of Don CARLOS should be considered as rebels to His MAJESTY the King of England, and as such *liable* to be punished by *death*. ’

This is just what he might and would have said, if the version, published by the *Courier* of last night, had appeared, instead of the one which we originally published. What now becomes of the denial upon “ unquestionable authority, “ that the “ Order of the day ” had reference *only to deserters*. Are *deserters* from the *Spanish* service, as such, “ rebels ” to His Majesty THE KING OF ENGLAND ? It is a document which most expressly declares, that *all* British subjects taken in arms for Don CARLOS, shall be *liable* to the punishment of *death* ; and we say again, that if any British officer should carry the threat into effect in any one instance, he would be liable to an *indictment for murder*.
—*Morning Herald*, Saturday, July 23, 1836.

The same subject continued—The Spanish Government placed in the light of Executioners of the newly-created law of Treason against British Subjects.

[Now that it can no longer be disputed that an Order of the day was issued by some authority or other at St. Sebastian, denouncing death, &c.] to all British subjects taken in arms for Don CARLOS, an absurd attempt is made to induce the British public to believe that it was a *mere admonition*, and that, if the punishment of death were inflicted at all, it would be inflicted by the Spanish Government, and not a British officer. What ! the Spanish Government put British subjects to death, as *rebels to His Majesty* THE KING OF ENGLAND ! The absurdity of this

explanation is so glaring as to need no comment. When THE KING OF ENGLAND punishes rebels to his authority, he will not entrust to the Queen of SPAIN, or any other Foreign Prince or Potentate, the duties of executioner.—*Morning Herald, Monday, July 25, 1836.*

*Another instance of the employment of the GUILLOTINE in
PARIS—Execution of Alibaud.*

Scarcely has the blood of the assassin *Fieschi* and the murdered *Morey* and *Pepin* dried upon the scaffold, when the axe of the *guillotine* drips with the gore of another political fanatic, who devoted his own life in attempting to take that of the "Citizen KING," the representative of the "glorious days of July;" the President of the "Monarchy with republican institutions." Whether *Alibaud* acted in concert with others, or conceived and ventured upon the criminal design alone, his whole conduct, from the moment of his arrest up to that of his execution, shewed that he was an enthusiast, whose morbid sensibilities were worked up to that pitch of fixed determination, which, in the prosecution of a dreadful enterprise, is reckless of all consequences. In a *BRUTUS*, this would be called Roman courage. In *Alibaud* it was only that disease of the reason which is called *monomania*, for which the proper coercion, or cure, was a lunatic asylum—not the *guillotine*.

Very different was the conduct of this last assailant of the life of LOUIS PHILIP—who is no more a CÆSAR than *Alibaud* was a *BRUTUS*—to that of *Fieschi*, who was a crazy ruffian, but not an enthusiast, and who mixed up with unmitigated ferocity the flippant vanity of a coxcomb. We believed all along, and we believe now, that *Fieschi* was a rank coward, who confidently flattered himself that his life would be spared at the last moment. Hence the impudent levity with which he conducted himself before and during his trial, when he was the coaxed, admired, and even

applauded hero of that disgusting drama exhibited in the Criminal Court of the degraded Peers of France, which reflected the same discredit upon the civilization of our Gallic neighbours in the nineteenth century.

The plot of *Fieschi* is still involved in mystery—the obscure allusions, which he frequently threw out to some dark agency behind the scenes, had reference to a secret that is buried with him. Certain it is that he denounced two men as accomplices, against one of whom, with the exception of *Fieschi's* own declarations, and those of the infamous woman who had her instructions from him, there was scarcely any thing like evidence, and against the other—none at all. The ruffian who destroyed eighteen or twenty innocent lives at a blow, was consistent in dying his hands in innocent blood at the moment of going down to the grave. But what are we to say of the “mild and merciful virtues” of the “Citizen-KING,” who allowed *Fieschi's* appetite for human victims to be indulged in the last moments of his wolfish career?

A Sovereign, of whose character some portion of wisdom and mercy formed any part, would have sent *Alibaud* to a lunatic asylum. His death upon the scaffold will only have the effect of a dreadful attraction upon the diseased temperaments of other *monomaniacs* of his class—men of strong political antipathies, whose morbid imaginations, by an exclusive contemplation of the one idea, are wrought upon and maddened “to that worst pitch of all which bears a reasoning show.”

Was *Alibaud* put to death for example's sake? Why then endeavour to make a secret of his execution? It appears that it was intended to enact the horrible tragedy at so early an hour as three o'clock in the morning, when all the population, for whose benefit the example was intended, were supposed to be in profound repose. It was accident which revealed this design to the people of Paris. If *Alibaud* was not put to death as an example, for what purpose was

he put to death at all? Was the "Citizen KING" afraid that the criminal would have the sympathies of the people? Can any example of punishment be beneficial which enlists the feelings of the community on the *side of the sufferer*? When we witness such scenes occurring so frequently in France under the new regime, let us recollect the emphatic declaration of LOUIS PHILIP to the friends of the abolition of the penalty of death, when the lives of the ex-Ministers were in jeopardy—"I shall do my utmost to realize your wish, which is also mine."*—*Morning Herald, Thursday, July 14, 1836.*

Lamentable instance of the loss of life by a false CODE OF HONOUR.—Tribute to the memory of ARMAND CARREL.

The fate of ARMAND CARREL, the victim of a false law of honour, was indeed a melancholy one; but though cut off in the prime of life and in the vigour of his intellect, he did not die too soon for his own fame. His reputation as a political writer was great, and the unsullied integrity of his

* *Ante*, pp. 291, 315.—We are glad to take leave of the *guillotine*, in Britain—as in France—a subject revolting to all enlightened opinion. But we must first insert a notice of some proceedings in Paris.

SOCIETY OF CHRISTIAN MORALITY IN PARIS.—ABOLITION OF THE PUNISHMENT OF DEATH.—The Committee of the SOCIETY of Christian Morality, in its sitting of 20th Feb. 1836, came to the following resolutions:—1st. That, in order to follow up 'the work begun in 1821, by establishing a competition for Essays in 'favour of the Abolition of the Punishment of Death, it proposes to 'decree a gold medal, and, if circumstances permit, several silver 'ones, to the authors of the best works demonstrating the horrible effect 'produced by executions, and the inefficacy of such punishment in 'repressing crime. The successful work on the subject to be printed 'and distributed at the expense of the Society.—2d. That all the 'friends of humanity should be invited to join the Society, to increase 'the number of petitions to the Legislature for the abolition of the

conduct, as a champion of the principles which he espoused, excited the admiration of his countrymen, even in an age full of contrary examples. But he did not engage in politics as a trade, or connect himself with party as an ambitious speculation. His opinions, whether right or wrong, were the result of an honest conviction, and the fidelity that gave lustre to his character will hallow his tomb.

A republican in principle, M. CARREL is not to be confounded with the vulgar herd of democrats and liberals—a sordid and intolerant race, who cover the most selfish designs with the mask of patriotism, and court a base popularity for the purposes of a baser ambition. M. CARREL was a republican upon the Roman model. Ardent, high-minded,

‘punishment of death.’ The form of the petition has been agreed on, and is to the following effect :—‘ That *all classes* of men are unanimous with regard to the *inefficacy* of the punishment, and that it is contrary to the feelings of society and the tendency of general legislation. That the *two Chambers* have each virtually petitioned the KING [of France] to the same effect, by the nature of their votes recorded on the general question.* That the *Juries* have constantly protested against the punishment of death, by declaring that in the greater part of the cases brought before them, where the accused were found guilty, extenuating circumstances still existed:’ [*Ante*, p. 291.]—‘ That the general feeling of the *nation* is opposed to the punishment of death, from the evidence afforded by the exertions universally made to procure its commutation—by the efforts of the Press—by the sentiments expressed by the KING himself—and also by the opinion of the Clergy.’ The petition terminates by expressing the firm conviction that the punishment of death *has never* contributed to diminish crime, and that the French Government has been similarly impressed, by the selection of a private spot for the execution of criminals; and, in conclusion, it trusts that the Chamber of Deputies will again maturely consider the subject.—*Morning Herald*, Monday, February 29, 1836.

* It may be added, that on the 8th October, 1830, when the lives of Prince POLIGNAC and his colleagues were in jeopardy, the CHAMBER OF DEPUTIES, by a majority of 225 against 21, voted an Address to the KING—LOUIS PHILIP—“supplicating him to *prepare a law* for the ABOLITION of the punishment of death.” See *ante*, Vol. i, pp. 68, 69.—ED.

and of inflexible determination, he had sternly devoted himself to what he believed to be the cause of public virtue and of his country. He chose the course which he believed to be right, and, above being intimidated by danger, or seduced by corruption, he pursued it as one who always felt, thought, and acted, under the inspiration of a chivalrous sentiment.

We may say of this gifted but ill-fated man, as our poet BYRON has said of the young and heroic MARCEAU—

Brief, brave, and glorious was his young career ;
His mourners were two hosts—his friends and foes ;

and, like MARCEAU, his fate was lamented, and his memory honoured, by friends and foes, because, like him—

He kept

The whiteness of his soul, and thus men o'er him wept.

M. THIERS, the former colleague of M. CARREL in editing the *National*, is now a Minister of France. No doubt, to the latter, the path was open to Court preferment, if he could exchange his principles for power and splendid fortune. He preferred the hostility of a corrupt and tyrannical Government to its favour. The noble spirit with which he stood forth on all occasions to maintain the Freedom of the Press against its most implacable enemy,* who will never forgive the service which that great engine of opinion did him, in elevating him to a throne, reflects imperishable honour upon the memory of the man, by whose genius and intelligence that Press was raised in the estimation of the intellectual world. Opposed as we are to the political opinions which M. CARREL advocated, we but perform a mournful duty in repaying a portion of the debt of gratitude which the free Press of every country owes to the exertions of its fearless and incorruptible champion. Who can wonder that the leaders of opposite parties followed, with unaffected sorrow, the bier of such a man, and that

* *Ante*, pp. 18—20.

CHATEAUBRIAND and BERANGER mingled their tears upon his urn!

But we cannot glance at the last sad ceremonial without experiencing another regret than what arises from seeing the grave close prematurely upon departed virtue. When we say that M. CARREL was a Republican upon the Roman model, we must qualify that praise by observing that piety was a distinguishing characteristic of the Roman patriot. The forum of public debate, and even the field of martial glory, were less sacred in his eyes than the temples of the gods. In error he worshipped; but he worshipped with sincerity. The light which unassisted nature gave him he followed, for want of a better; and an humble dependence upon, and a profound veneration for, an overruling PROVIDENCE, was inseparably associated with the valour and the energies which gave Rome the dominion of the world. But, modern France! what shall we say of it, when we find, that to be thought enlightened, it is necessary to cast off all regard for religion; and, to be supposed free, one must become emancipated from the influence of Christianity. We would fain believe that what the injudicious friends of M. CARREL called his "dying injunction," was but the expression of that delirium, which clouded his fine intellect for some time before it fled for ever. We would fain believe and hope that the words "no priest—no Church," were the emanation of that disorder of the mind, whose bewildered fancies he himself, in a lucid moment, spoke of as the *ægræ animæ*. A triumph over Christianity would be a lamentable triumph for "young France." To dispose of the remains of man, as of those of the "beast that perisheth," will not raise either the intellectual or moral character of a civilized country. Nor will life have more enjoyment because Religion is forbidden to suspend the lamp of immortality amid the gloom of the grave.—*Morning Herald, Friday, July 29, 1836.*

Further proof of the clemency of WILLIAM THE FOURTH, evinced by the reprieve of all the capital convicts mentioned in the RECORDER of London's Report.

The clemency of the reign of WILLIAM THE FOURTH will form one of its distinguishing characteristics in history—a circumstance which we believe, and indeed we know, to be attributable to the personal aversion which THE KING entertains to the judicial destruction of human life. And if it were not that his Whig Ministers have a strong hankering after the old system of exterminating punishments, the public would have seen still fewer of those cruel and useless examples which have stained the annals of British criminal judicature of late years.

The recent report of the RECORDER of London has afforded a new instance of the benignity with which our present gracious SOVEREIGN exercises that branch of the regal prerogative which was intended to repair the otherwise fatal errors of fallible tribunals, and to temper the severity of the laws. In that report were contained some offences of a very serious nature—offences deserving of severe punishment, and which in some former reigns used to be almost invariably visited with *death*. THE KING feels and knows, that for the repression of such crimes, the horrible exhibitions which were so frequent some years ago in the front of the Old Bailey, have proved wholly ineffectual—as ineffectual as the examples of blood which the paper-Moloch of the Bank of England formerly demanded, and, in the midst of which, the crime of forgery grew even faster than a barbarous law could supply the rage for human victims.

THE KING, in carrying out his own paternal views as to the substitution of *corrective* for *exterminating* punishments, has met the wishes of an enlightened nation, and set a noble example, which his Judges, in general, seem well disposed to follow. At the late Summer Assizes throughout England

and Wales there were but *six* executions—a thing unprecedented! being less than *one* to each circuit; but the fact is, that with the exception of the execution of the three Irishmen, at Shrewsbury, for highway robbery, there was *no example of blood upon any circuit but the Western*; and of the three executions upon that, two were for murder, and one for the arson of a dwelling-house.

As to the Shrewsbury case, it underwent a good deal of discussion at the time.* The advocates for a merciful exer-

* Originally the convicts were *four* in number, but one of them (through the recommendation of Mr. Justice LITTLEDALE, who tried them) received a commutation of his sentence. There was a remarkable feature in their case, which ought to have induced the HOME SECRETARY to save their lives, not on the ground of mere “humanity,” but of expediency also. We allude to the fact of their confessing, while under sentence, the perpetration of a number of highway robberies,—but *in none of which had they imbrued their hands in human blood*—and among the rest, a robbery for which some *innocent* parties were recently convicted, and about to be transported. In some of these robberies they had had accomplices, who were *not apprehended*, and who may *now* be encouraged to renew their depredations, as the dead can make no disclosures. The three convicts were executed, Saturday, August 13, 1836. A notice of their case had appeared in the Morning Herald, from which the following is taken.—ED.

‘ Four men have been condemned to death at Shrewsbury for a highway robbery, with violence of an aggravated character. It is one of those cases for which the Government, of 1834, endeavoured to reserve the extreme penalty by an excepting clause, moved by Lord HOWICK in the Committee upon Mr. LENNARD’s Bill for repealing the punishment of death in *all* cases of robbery. The sense of the House was so manifestly opposed to this excepting clause, that it was withdrawn by the Noble Under Secretary without going to a division.

‘ Mr. LENNARD’s Bill passed the Commons, and went to the Upper House, where it was not rejected, but *postponed*, on a pledge given by the Noble and Learned Lord then occupying the Woolsack,† that, in the next Session of Parliament, he himself would bring in a

† *Ante*, pp. 201, 227.

cise of the law, in that case, went upon the ground, principally, that the prisoners *might* have put all evidence out of the way, by adding murder to robbery, *but did not*; and that to confound *robbery* with *murder* is, as Dr. JOHNSON well put it, to *provoke the commission* of the greater crime, to prevent the detection of the less. Lord John RUSSELL,

‘ more comprehensive measure for the revision of the penal code, founded upon the expected report of the Criminal Law Commission,* which had then been appointed more than twelve months. That pledge, many of our readers know, was not redeemed.

‘ Since that time two years have elapsed, *without any execution* in England for highway robbery down to the end of 1835. What has been the result? The crime has not increased—for, by reference to Parliamentary Returns, the commitments for the two years 1834 and 1835, were 719, having been 776 in the two preceding years during which 12 persons suffered death. Where then is the necessity for now *reviving* executions? What will the public think of sacrificing *four* lives for a single offence, where probably *one* of the culprits was chief? Unless we are mistaken, it is not long since four persons were convicted of a *murder* in Lancashire, arising out of the game laws, when they all received sentence of death, but *none* underwent the sentence, because it could not be discovered which of them inflicted the fatal wound.

‘ Nor can it be urged, that out of the 719 commitments, there have been no instances of commutation where the offence was attended with atrocious violence. To go no farther back than the last Spring Assizes in Lincolnshire, two men were found guilty of robbery under circumstances of great personal cruelty, yet the Learned Judge before whom they were tried [Mr. Justice BOSANQUET,] did not leave them for execution. Nor has the offence increased in that county, the calendar being very light at the recent Assizes. Those men are now undergoing a punishment, which in suffering is worse than death, and does not brutalize spectators by teaching them bloodshed.

‘ Having thus noticed the subject as one of interest with the public, we hope it will turn out that the case had previously occupied the attention of the Secretary for the Home Department, and been deemed to be one of those in which it is expedient, on various grounds, not to enforce the extreme penalty.’—*Morning Herald*, Aug. 8, 1836.

* *Ante*, p. 235.

however, though a *Whig*, and something more, does not appear to have advanced quite so far in enlightened notions of criminal jurisprudence in the *nineteenth* century as the *Tory* Dr. JOHNSON in the *eighteenth*. His mind, no doubt, actuated by that stern sense of duty which caused our Whig rulers to hang up the reform rioters of Bristol and Nottingham,* whose passions had been excited to frenzy by Whig writers, was inexorable to all argument in behalf of any less sacrifice of human life, than the immolation of the *three* convicts. There were persons who thought, that if, in defiance of the practical lessons of experience, our Whig rulers considered an example of blood necessary, the taking of *one* life might have sufficed; but, no—Lord John RUSSELL and his colleagues resolved that the *three* convicts should be put to *death*, and refused to advise the SOVEREIGN to interpose the prerogative of mercy between the life of any *one* of them and the merciless law. This, too, was done, although the disuse of the scaffold in the metropolis for three years† has been attended with a considerable diminution of crime, as the Parliamentary Returns prove.—*Morning Herald, Tuesday, September 27, 1836.*

Remarks on the practical working of the PRISONERS' COUNSEL ACT.

Among the defects in our law which we have long thought to be a disgraceful anomaly in the system of British justice, was the practice of denying to prisoners accused of *felony*—an offence often affecting the life, always affecting the liberty of British subjects—the privilege, or rather the right, of making a full defence to the charge, by Counsel. For years past, our readers are aware, we have availed ourselves of every fair opportunity to have that reproach to the

* *Ante*, Vol. i, p. 189, *et seq.*

† With an unnecessary exception,—brought in from the County of Surrey—mentioned in the Note, *ante*, p. 286.

administration of justice removed. At length the power of public opinion prevailed over the prejudices which long usage had somewhat consecrated, and the public were indebted for the legislative efforts which reformed the law in that important particular to Lord LYNDHURST, the eloquent advocate of the Prisoners' Counsel Bill in the House of Peers; and Mr. EWART, its original proposer and persevering champion in the House of Commons.*

Scarcely, however, has this Bill been put into practice, when attempts are made in certain quarters to run it down, and no where so much as at the Court of the Old Bailey—not indeed by the Learned RECORDER, who presides in that Court, and whose conduct on all occasions entitles him to the highest praise for the temperate, impartial, and intelligent administration of justice—but by individuals connected, in another capacity, with the practical operation of the laws, and who are such professed economists of the “public time,” that they seem to think it quite absurd that a British subject, accused of felony, should consume as much of that valuable commodity as is necessary to make his “full defence.”†

Now, our own opinion is, and it may be a very posterous one, that “time” is but a secondary consideration in the administration of justice. We even assert, at the risk of being supposed to have very primitive notions of justice, that the poor man, whose life or liberty stands in peril upon an accusation of felony, has as *much right* to “all the time” necessary for making his “full defence,” as the Judge who tries him has to his salary, or the lawyer who undertakes to defend him has to his fee. It is true, that if by making a full defence, more time is consumed than by making an imperfect one, the Judge will have to give more time to the public for his salary, and the lawyer more time to his client for his fee. But, in our view of what justice

* *Astr.* p. 70, and Vol. i, p. 247.

† *Astr.* p. 308.

demands, this is no reason why any privilege which the law gives to the accuser should be denied to the accused. To save time is undoubtedly good, if something still more precious than time is not lost or endangered thereby. Justice travelling through the calendar at a slow pace is better than Injustice in a gallop.—But, is the Prisoners' Counsel Bill calculated, in reality, to protract trials, or waste the time of Courts of Justice ?

Before the change in the practice of the law took place, although the Counsel for the prisoner could not make a speech in his behalf, yet the prisoner had a right to make a speech for himself ; and many a prisoner who fancied he had oratorical powers, would, by an incoherent and rambling statement, the greater part of which was wholly irrelevant, detain the Court much longer than it would be detained by the disciplined and relevant speech of a Counsel. It is really a matter of astonishment to us, how so clumsy and imperfect a mode of administering justice could have obtained so long in this country, more especially as statutes were passed as long ago as the reign of WILLIAM and MARY, and improved in the reign of ANNE, to give persons charged with *high treason* the advantage of making their full defence by Counsel. Never have those statutes been complained of as consuming too much of the time of Courts of Justice. The legislators who passed those statutes were persons who moved upon the political stage when the *rich and great* were not unfrequently involved in charges of treason, on account of disputed successions and the bitterness of party spirit. They, therefore, *took care of themselves* and their own class ; but the great mass of persons accused of felony are *poor and friendless*. No such statutes were passed to protect *their lives and liberties* from the precipitate decisions of justice partially administered. Rich men are also more liable to be accused of misdemeanors than of felonies—and in misdemeanors, as well as treason, we need not say the accused has long had the right of making

his full defence by Counsel. The Constitution of England says all men are equal in the eye of the law; and in advocating the Prisoners' Counsel Bill, we advocated the removal of an anomaly which made *one* law for the rich, and *another* for the poor. Even property to the smallest amount was better fenced round and protected by the law than human life.

As to the question of time, we always maintained that under the old law more time was generally consumed in irregular and tedious cross-examinations, in order to suggest points to the Jury, and convey indirect explanations of pinching facts, than could be consumed by the direct reasoning and explanations of a Counsel's speech. If this privilege may be abused, so may every privilege. To reason from the abuse of any thing, against its use, is itself an abuse of the power of reasoning, but no argument for its extinction.

But, there is practical testimony which we are enabled to adduce in favour of the beneficial working of the Prisoners' Counsel Bill, even as regards the question of *time*. That testimony we copy from the columns of the *Bucks Herald* in another part of our Paper.* It is the testimony of the Editor of that ably conducted Journal, who admits that he

* ‘ The working of this Bill, at our Sessions just terminated, has
 ‘ certainly been such as to shorten and simplify the trials of the prisoners.
 ‘ The cross-examination of the witnesses, by the Counsel for the pri-
 ‘ soner, used to be extremely long and wearisome, as the advocate was
 ‘ compelled to elicit all he possibly could from a witness (frequently a
 ‘ very refractory one), as his only means of defending his client; but
 ‘ now that Counsel are allowed to defend them by argument as well as
 ‘ evidence, the time of the Court has been very considerably saved, and
 ‘ the Counsel at our Sessions (we particularly allude to Messrs. Sidney
 ‘ TAYLOR and MALBY) were not only brief in their cross-exami-
 ‘ nations, but equally judicious in their speeches for the defence, which
 ‘ were confined to mere analysis of the evidence, and such arguments as
 ‘ bore directly on the case, and which, whilst they were of infinite
 ‘ advantage to the prisoner, spared the Court from any lengthened
 ‘ summing up of the evidence. Although we were of opinion formerly

was adverse to the Bill, but candidly confesses that his anticipations of its being productive of the inconveniences that he apprehended, have not been realized, as far as he has seen it put into operation. Similar testimony, it appears, has been borne by the Magistrates of Buckinghamshire, including the able and intelligent Chairmen of both Courts.* They were previously adverse to the measure; but have candidly admitted that the manner in which they have seen the Bill carried into effect, has changed their opinion, and convinced them that it will tend rather to save, than waste, the time of Courts of Justice. For our own part, we did not think it necessary to copy the strong testimony borne to the salutary working of the Bill by the *Bucks Herald*, until we saw that in some quarters it was studiously represented as having the opposite effect to that of “shortening and simplifying” the trials of prisoners, besides being objectionable on some other grounds not clearly explained.—*Morning Herald*, Monday, October 31, 1836.

The Ultra-Liberals of SPAIN demand laws of terror and blood similar to those of the first French Revolution—Admirable Speech of the DEPUTY, M. ARMENDARIZ, in opposition to the project.

One of the extraordinary features of the Spanish revolution is, that it has not produced a single man of genius. When we look at the speeches and acts of those who now constitute the Government of Spain, and of those who are

* that this Bill would rather have a contrary result, and were borne out and confirmed in that opinion by a very able pamphlet, written by Frederick CALVERT, Esq., yet we are bound to say, that our first trial of the Bill has considerably shaken that opinion, although the discretion of the Barristers we mention may not be universally displayed. Their exercise of their new power here was adverted to more than once by the Magistrates, and found very general and openly expressed approval.—*Bucks Herald*.

* Sir T. FREEMANTLE, Bart. M. P. and Sir T. AUBREY, Bart.

in Cortes assembled, we observe no traces of any thing beyond a dull and ambitious mediocrity, mixed with the pompous inanities of inordinate conceit and imbecile pretension. Not only is the character of Spain demoralized, but its intellect appears to be effete.

In the first French revolution, although human vices and passions rushed over the ruins of law and order to revel, like the monstrous productions of chaos, in the licentiousness of anarchy, yet great talents, and the energies of genius in various forms, were displayed amid the social disorders and political madness of that time; but, in Spain, the leaders of revolution can imitate nothing but the crimes and vices of the Jacobins of France;—not a ray of the genius, that flashed through the gloom of that terrible era, illumines the dulness of the sittings of the Cortes. The orators of that assembly are as guiltless of any exhibitions of high intellect, as they are of the inspirations of a generous and disinterested patriotism.

But as far as the French revolution was *exemplar vitii imitabile*, the "Constitutional" Legislators of Spain seem well disposed to imitate it; a "reign of terror," with all its acts of confiscation, persecution, and blood, they would fain establish throughout the dominions of the "innocent ISABEL" to signalize the triumph of liberalism and the "regeneration" of their country. Already the question of erecting revolutionary tribunals, to try all persons suspected of Carlism—as in France revolutionary tribunals were erected, to try all persons suspected of the very indefinite crime of "incivism"—has been discussed in the Spanish National Convention.

If such arbitrary jurisdictions were once established, we have no doubt they would soon rival, in the atrocity of cold-blooded murders, and in the flagitious mockery of both the forms and substance of justice, the infamous tribunals of Jacobin Paris, the recital of whose deeds at the present day makes humanity shudder. The crimes committed in the

name of Liberty rivalled the worst acts of the worst despotism with which the earth was ever disgraced. The chosen instructor of regenerated France was the public executioner ! The principal machinery of liberalism was the *guillotine* ! The revolutionary tribunals, irresponsible except to the ferocious mob that surrounded their Courts, or rather their dens of human destruction, and incessantly demanding new sacrifices, were accustomed to try and condemn to death hundreds of their fellow-citizens in the course of a few hours ; and, no sooner was the doom pronounced, than the wretched victims were dragged off to be butchered by that knife which dropped continually with human gore, or were dispatched in a still more summary manner on their way to the scaffold. How does the felon-fame of a DOMITIAN, or a NERO, wax pale before the enormous atrocities of the liberty-loving Jacobins of the French revolution !

They who look upon history as an "old almanack," may well despise its warnings, and sneer at the voice of its experience. Those, who, with the Roman orator, consider history a depository of practical wisdom for the instruction of mankind, will derive some instruction for the present, and even some guidance for the future, from the records of the past. Can we, when recollecting what the deeds of the revolutionary tribunals of the French "reign of terror" were, forebode any other than the worst and most direful consequences to the interests of justice, and the rights of humanity, if similar jurisdictions, and on a similar plea, be established in revolutionized Spain ? The pretext of the French Jacobins was the danger to the Commonwealth, from the plottings and intrigues of the enemies of the new state of things. The pretext of the Spanish revolutionists is the same. Most assuredly such jurisdiction would be no better than the LYNCH Committees of democratic America*—a source of social terror and civil massacre.

* *Ante*, p. 269.

But we must except one Member of the Cortes from the general condemnation of a legislative body destitute of talent, and holding in contempt the claims of humanity, and the interests of civilization.—It is M. ARMENDARIZ, who had the virtue and the moral courage to resist, in a speech breathing the eloquence of truth, the project of the Commission of War for establishing revolutionary Courts of terror, under the name of EXCEPTIONAL TRIBUNALS, to try all persons suspected of *Carlism*, and to punish them with death, and confiscation of property. Carlism, like *constructive treason*, would admit of a pretty wide latitude of definition; and, in the net of so comprehensive a penal charge, there never need be wanting a large draught of victims. What heresy and suspicion of heresy, were to the *holy office* of the Inquisition, Carlism and suspicion of Carlism, would be to those political tribunals. What said M. ARMENDARIZ, for whose sake we must withdraw the charge that no ray of intellect has shone upon the sittings of the Cortes?

‘Exceptional Tribunals,’ said that Deputy, ‘are a snare laid by tyranny to act unjustly with the appearance of justice. How can we adopt a project whose bases are founded on the promulgation of a law which punishes the *most ordinary occurrences* with death— which establishes in every province a tribunal specially appointed for the execution of its decrees, and under the controul of Judges nominated by the Committees of armament and defence—Committees that owe their origin to political movement, in opposition to other principles, stipulating that every sentence must be awarded within the fatal term of fifteen days, and closing the door against any appeal that the condemned might make, in consequence of the errors or partiality which such scandalous precipitancy would undoubtedly engender? A Congress composed of the representatives of a free nation could never agree to this.’

‘I am horrorstricken,’ he then proceeded emphatically to say, ‘when I reflect that I myself and many other patriots would have been sacrificed, if a tribunal of this nature had been already established; for I contributed in a direct manner to the wants of the Carlists, in Navarre, when a member of the Corporation of my own town. The Carlists ordered us to send them rations to a certain place, under pain

‘ of death, and threatened to sack the town, if the supplies which they required, were not furnished forthwith. The right of *self-preservation*, which is innate to man, compelled us to accede to their demands ; and an *Exceptional Tribunal* of the nature alluded to, would have *condemned us to death*, as the assistance we rendered was of a direct, though not spontaneous kind.’

Thus both ably and humanely did M. ARMENDARIZ argue against the abominable project of Exceptional Tribunals, constituted of hot-headed political partisans, to try political offences, and armed with the terrible power of capital punishment without appeal. In the passages of his speech, which we have given above, as furnished by our reporter, we have marked certain words and phrases in Italics, to save us the trouble of commenting upon them—the peculiar atrocity of the measure proposed being rendered more apparent by the terms thus emphatically marked. But the orator of humanity did not rely upon the arguments of justice alone ; he also shewed that the measure would be as impolitic as it was cruel, and therefore to be rejected, even on the ground of *expediency*. He said—

‘ The system of terror advocated in the Chamber, will prove most prejudicial to the QUEEN’S cause, and augment, in a considerable degree, the number of the enemy.’

He instanced the case of SANTOS LADRON, the Carlist chief. He said that when he raised the standard of rebellion, he found it difficult to get adherents. The *system of terror* introduced by the QUEEN’S Generals had induced many to become partisans of Don CARLOS. After the execution of SANTOS LADRON, who, with several of his followers, taken prisoners along with him, was put to death in cold blood, no less than five hundred persons from his own town alone joined the ranks of the Carlists.

It is well that the Government had, since the subject was under discussion before, become somewhat alarmed as to the impression that would be made on the other Powers of Europe in consequence of such revolutionary tribunals

being established in Spain. The Minister of Justice was understood, on the former occasion, to give his assent to the proposition of the Civil War Commission, to the full extent of its enormity. After the address, however, of M. ARMENDARIZ, he expressed sentiments which the violent democrat, M. OLOZAGA, considered so unlike those which he had expressed a few days before, that he exclaimed,

‘ The fickleness and levity of Her Majesty’s Government has placed the Committee in a critical position.’

Modifications of the measures proposed by the Committee were eventually adopted—but this subject has already carried us so far, that we must reserve further remarks.—*Morning Herald, Wednesday, November 23, 1836.*

*Case of a Solicitor, capitally convicted of forging a
POWER-OF-ATTORNEY.*

It is now about four years since that important branch of criminal law reform which concerns the *law of forgery* was carried through the Legislature. Official documents have confirmed, nay, more than confirmed, the beneficial effects which the advocates of that reform had anticipated, as to the substitution of a less revolting punishment than death being *more efficacious* for the repression of a crime, against which the destroying sword had been drawn in vain. Among those advocates were upwards of a *thousand bankers*, whose memorable petition in favour of the removal of the capital enactment we published and commented upon at the time.* The bigoted adherents of the old system of strangulation on the scaffold attempted to work upon the fears of a commercial community, by predicting that to take away the gallows from the protection of paper credit would be to pronounce its extinction! The same sort of appeal to sordid

* *Ante*, Vol. i. p. 38.

prejudices had been adopted. to prevent the passing of ROMILLY'S Bill to repeal the atrocious enactment which made the privately stealing to the value of *five shillings* in a shop, punishable with death ! Under this law the young woman *Mary Jones* suffered, whose case Sir William MERRIDITH relates with so much simple pathos.* Deprived of her husband by the barbarous practice of impressment, in a state of destitution, with a child at her breast, she snatched from a counter, in a fit of desperation, property amounting in value to that number of shillings which the law of a *Christian* people had made the *price of human life*. She was, in fact, driven to crime by the Government that executed her ; but then she died, said the merciless supporters of the five shillings law, to preserve from destruction the shop-keeping interests of England, which never could survive the repeal or disuse of a law, so necessary to protect the contents of their counters from ruinous depredation !

Alas for the prophecies of those oracles of Draconic legislation ! How are they falsified by the results ! The Forgery Bill of 1832 abolished the punishment of death for all but two species of that offence, and commercial credit survives the shock ! The law that inflicted death for stealing to the amount of five shillings in a shop has long ceased to exist, and shopkeeping interests still continue to flourish !—nor are the contents of the counter—the silk ribands, laces, chintzes, tape, and bobbins, one whit the more liable to depredation because five shillings worth of those articles can no longer be weighed in the scales of Shylock justice against human blood.

But a sentence of death against a forger has been pronounced within a few days, by the RECORDER of London, at the Court of the Old Bailey. The case of this person—we mean, of course, the attorney—is one of the exceptions in the new forgery law—an exception too of Whig origin,

* *Ante*, p. 38.

having been proposed by the Marquis of LANSDOWNE in the House of Lords, subsequently to the Bill for the total abolition of the penalty of death having *twice* passed the Commons.* The Whig accusers of the House of Lords have not, however, made this one of their inculpatory *items* in their Bill of impeachment against the Peers, for innovating upon the decisions of the Commons. This last effort to retain some portion of the old and barbarous system, and to hand it down as a precious relic to posterity—who might otherwise have doubted, that, in Christian and moral England, such a law could ever have existed—being the act of a Whig Lord and a Whig Minister, is not recorded among the imputed delinquencies of the House of Peers by the Peer-denouncing partisans of the Ministry. Nevertheless, if the prisoner should be sent to the scaffold, the *law* under which the criminal suffers, as well as his *execution*, will have been the act of the Whigs—the disciples and associates of the lamented ROMILLY in the work of criminal law reform.

To punish with the death of the murderer the person who commits an offence of fraud and circumvention, is to confound those eternal distinctions of morality which the allwise CREATOR implanted in the mind of man, and is, consequently, less an exercise of the legitimate power than the impious audacity of human legislation. Leaving the crime to all the moral disgrace and infamy which belong to it, we cannot *confound it with murder*, either in its nature or punishment. But, independently of religious considerations, there was one great practical argument urged upon the most abundant proofs, by the advocates of the total abolition of the penalty of death for that offence:—it was that the punishment of death rather *encouraged crime* than protected property, because of the great number of persons whom it deterred, through motives of conscience and humanity, from putting

* *Ante*, Vol. i. pp. 314, 315.

the law in motion as prosecutors, or administering it according to evidence as jurors. On such grounds did the *thousand bankers*, to whom we have alluded, claim *protection* for their property—*by the abolition of the capital law*. The penalty of death was removed in all cases, except forgery of powers-of-attorney and wills—because it was the *least effective* of all punishments. Why then should that *inefficient punishment* be retained for such cases? Ought property under *powers-of-attorney* and *wills* to be *less* protected than other property? Let the Marquis of LANSDOWNE answer that question, if he can. If he cannot answer it satisfactorily—and we are sure he cannot—the punishment of death for those cases of forgery should be abolished, as equally impracticable and barbarous. An execution for forgery now-a-days would raise a burst of indignation against the Whigs, which they had better not provoke.—*Morning Herald, Friday, September 30, 1836.*

BENEFICIAL EFFECTS of the mitigation of the FORGERY Law in causing a diminution of the crime.—Further allusion to the Case of an Attorney under sentence of death.

We shewed the other day, from Parliamentary Returns,* that the abolition of the punishment of death for FORGERY (with the two exceptions already noticed) has been followed by a great diminution of the crime. We shewed that in the five years ending with 1820, during which period in England and Wales no less than 94 human victims to the law of blood had perished on the scaffold, the number of committals was 645; while, in the five years ending with 1835, during which period no human sacrifice was offered up to the paper-Moloch, the committals were only 351, or little more than one half the number that signalized the era

* *Ante*, Note, p. 109.

of judicial slaughter—an era so shocking to civilization and humanity!

Let our Whig rulers look to these proofs of the inefficacy of death-denouncing law to repress the crime of forgery, and say whether it is necessary for the protection of commercial property—for the stability of commercial credit—for the security and confidence of mercantile transactions—that the horrid machinery of the scaffold should again be put into operation, and its revolting exhibitions obtruded upon the disgusted sense of an enlightened public? Surely, if the change in the law left the amount of crime as great as it was before, it would be disgraceful, ay, and even criminal, to have recourse to capital punishment again for any species of forgery, inasmuch as such capital punishment would be at least a useless and unprofitable shedding of human blood. But when it appears, upon unquestionable evidence, that the removal of the capital penalty in all cases in which it has been removed, has been attended with a reduction of the amount of crime, the setting the scaffold to work again, under the preserved remnant of the barbarous law, would be an act of relentless severity, without any assignable motive. It would seem as if it were done from a spirit desperately tenacious of the remains of exploded barbarism—treating with contempt the lessons of experience, and setting public opinion at defiance.

In the personal clemency of THE KING we repose great confidence, although we are aware, that, if his Ministers *insist* upon carrying Lord LANSDOWNE'S clause of the forgery law into execution, His MAJESTY is bound by the decision of his responsible advisers. We know the repugnance which the paternal heart of THE KING entertains against the extreme execution of those laws by which the lives of his subjects are taken, and we believe that the *practical* amelioration of several of our still remaining capital statutes during his reign, is mainly owing to the frequent expression of this sentiment by a Monarch who

deserves to live in the hearts of a free people. We hope, therefore, that the revival of the exterminating law of forgery will not stain the mild sway of his paternal sceptre.—*Morning Herald, Wednesday, October 5, 1836.*

Impolicy of the CAPITAL EXCEPTIONS in the mitigated law of FORGERY—Further allusion to the Case of the Solicitor, convicted of forging a Power-of-attorney.

The best part of a good system of criminal law is that which concerns rather the prevention than the punishment of crime. Punishment itself, if not inflicted with a view to prevention, is only revenge, and Justice should know nothing of that passion. To prevent crime, or even to repress it in any great degree, *capital punishments have signally failed.* When every species of forgery was punished with death, every species of forgery was greater than at present, when a punishment less revolting to the feelings of mankind is substituted for it, in all cases, with the exception of forged *powers-of-attorney* and forged *wills*—two ill-advised exceptions, engrafted by the Marquis of LANSDOWNE and Lord WYNFORD, upon Lord DENMAN's Bill for the total abolition of a penalty, that by its very severity defeated its own intention.

If the law of death had the terror which some ascribe to it, a recent instance of a forged power-of-attorney, upon which we have already made some remarks, would not have occurred; and if the strong recommendation of the Jury to mercy in that case should be disregarded, we are quite sure that the species of property which the law was intended to protect, will be henceforth less protected than ever; because, if we may judge by analogous cases, the feeling produced upon the minds of Jurymen, at the present day, by the inexorable execution of so severe a law, will make it *more difficult than ever to obtain a conviction.* Let it not be forgotten

that the *eleven hundred Jurors* of the City of London,* who petitioned the Legislature for the total abolition of the punishment of death in all cases affecting the rights of property, put the following remarkable testimony—the practical testimony of their own experience—to the mischievous working of the *capital* law upon record—

‘That, in the present state of the law, JURIES feel extremely
‘reluctant to convict where the penal consequences of the offence
‘excite a conscientious horror on their minds, lest the rigorous performance of their duty as Jurors should make them accessory to
‘judicial murder.’

Hence it happens, that under laws of blood, while some culprits suffer the extreme penalty of the law, the greater number of offenders escape with total impunity—and hence such laws operate, not to the repression, but the encouragement of crime.

As to the prevention of forgery, there is a great variety of cases in which some *care and precaution*, on the part of persons interested in the protection of property liable to such fraudulent depredations, would be of far more avail than any penal statute. Let us take, for instance, the case to which we have alluded—that of forged *powers-of-attorney*. Upon this subject we published the other day a mode of prevention, suggested by a Correspondent under the signature of “Mercator,” whose communication also appeared in the columns of the *Morning Post*. We have always thought that careless and slovenly modes of transacting business connected with commercial property invites to more crime than any laws can repress. Our Correspondent says, as to forged powers-of-attorney for the transfer of public Stock,

‘Fraud of this description is facilitated by the objectionable
‘manner in which powers-of-attorney are attested. These instruments, when executed in the country, ought to be attested by men
‘of business, having a commercial correspondence with London. Let

* *Ante*, Vol. i. p. 166.

‘ it be a regulation that a country banker attest the signature, and state on the face of the document the firm of the London bankers who are his agents, at the same time sending advice of his attestation in his current letter of business to such London bankers: on receiving the power-of-attorney so attested, the Bank of England would apply at the house of the London bankers, and thus determine its genuineness. Such an arrangement,’ he adds, and we perfectly agree with him, ‘ would be incomparably more effectual in repressing the offence in question, than the foolish reliance of the Bank on a penalty never found effectual, because opposed to the feelings of the community. In fact, with these precautions, it would become almost impossible to consummate the fraud.’

Surely the prevention of the crime by such means is better than the extermination of our offending fellow-creatures, even if such extermination by the sword of the law were as effectual in preventing crime, as it is notoriously the reverse.

While we have been advocating, as well as we can, the reform of the objectionable parts of our criminal code, and supporting such measures in Parliament as we think conducive to its enlightened amelioration, a Government Commission has been at work, at least for two Sessions past, which has been found very useful in affording a pretext to the Whigs for postponing from time to time that general reform of the criminal law which they ought long since to have accomplished. NAPOLEON in the midst of his wars found leisure for the formation of a code, penal as well as civil, which remains a more lasting monument of his genius than the fame of his victories. The King of HOLLAND is at this moment engaged in promoting a similar work,* although in that commercial country the laws against crime were already milder than in England.—*Morning Herald, Wednesday, October 26, 1836.*

* ‘ After the passing of the code [of the Aulic Courts], and of a law for the temporary completion of the enactments relative to simple and fraudulent bankruptcy, all the parts of our legislation may be carried into operation, and measures shall be taken entirely to complete them by a PENAL CODE.’—[*Speech on opening the Chambers, Oct. 1836.*]

*Another instance of the Clemency of WILLIAM THE FOURTH—
—Reprieve of the Solicitor, under sentence of death for
forging a POWER-OF-ATTORNEY.*

We have to add to the many instances of Royal clemency which have distinguished the reign of our paternal Sovereign, and given a pure and imperishable lustre to the Crown of WILLIAM THE FOURTH, the merciful mitigation of the sentence of a criminal, who, under the LANSDOWNE exception to the reformed law of forgery, was sentenced to die on the scaffold. *It is now impossible that there can ever be another execution for forgery*—and therefore the *capital exceptions of the Forgery Act should be repealed*. Property derives small protection from *impracticable laws*.

In the year 1786, the GRAND DUKE OF TUSCANY, who reformed the Criminal Code, and abolished the penalty of death in his dominions, thus expressed himself in reference to the result of that alteration of the laws:—

‘With the utmost satisfaction to our paternal feelings, we
‘have at length perceived that the mitigation of punishment, joined
‘to a most scrupulous attention to prevent crimes, and also a great
‘dispatch in the trials, together with a certainty of punishment to
‘real delinquents, has, instead of increasing the number of crimes,
‘considerably diminished that of smaller ones, and rendered those
‘of an atrocious nature very rare.’

—The authentic records of crime in this country prove that the clemency of WILLIAM THE FOURTH does not work less beneficially than that of the Tuscan Sovereign—for the interests of society.—*Morning Herald, Thursday, October 27, 1836.*

ADDRESS OF THE SOCIETY

For the diffusion of Information on the Subject of

CAPITAL PUNISHMENTS.*

(December 31, 1836.)

‘ THE COMMITTEE of the SOCIETY for the diffusion of information on the subject of Capital Punishments, convinced that the least effective mode of protecting life and property, is, by sanguinary laws, address the public on this important subject.

‘ The arguments against taking human life for crime are too numerous to allow more than a concise enumeration of the principal ones on the present occasion. The penalty of DEATH excludes that which should be an immediate object of human punishment—the reformation of the offender. It partakes of the nature of revenge, which man is not allowed by the Divine law to practise on his fellow-creatures——“Vengeance is *mine*—saith the Lord.” It inevitably leads, in consequence of the fallibility of human tribunals, to the ignominious destruction of innocent life—of which the history of criminal law in our own country bears ample record—and, when life is sacrificed through false evidence, or erroneous reasoning from circumstantial proof, the fatal error is irreparable.

‘ The penalty of death is moreover, as an example, momentary, and of no beneficial effect—it disgusts the good, and brutalises the bad, who witness the spectacle of man cruelly destroyed by man :—as an act of extreme violence, it teaches violence to the people—as

* As circulated in the Provincial Press.

' an act of deliberate homicide, it diminishes the regard due to the
 ' sanctity of life, and renders murder less revolting to the ignorant
 ' mind. When inflicted for offences of different degrees of malignity,
 ' " it confounds the gradations of guilt in the eyes of the multitude,
 ' and inclines the commission of a greater crime to prevent the detec-
 ' tion of a less." In times of tyranny, or civil commotion—and we
 ' know not how soon such times may occur—it is liable to be perverted
 ' to the destruction, not only of innocents, but of valuable lives, to
 ' gratify political revenge, or serve the purposes of depraved ambition.
 ' Lastly, it often produces impunity of crime, from the natural horror
 ' which is felt when the passions are not excited, to witness inste-
 ' mental to the violent death of a fellow-creature, and thus it defeats
 ' the end of all punishment, which is—not the infliction of partial
 ' evil, but—the repression of crime.

' Experimental proofs of the inefficacy of capital punishments
 ' might be adduced to a vast extent, would the limits of these remarks
 ' permit. Our own times afford a practical testimony against them.
 ' The Criminal Returns prove, for instance,—that there has been *less*
 ' horse-stealing in the last six years, without any execution whatever,
 ' than in the preceding six years, with 38 executions :—that there has
 ' been *less* sheep-stealing during the three years elapsed since the
 ' abolition of capital punishment, than during the three previous years :
 ' —that there have been *fewer* acts of burglary and housebreaking in
 ' the last three years, with only 2 executions, than in the three years
 ' ending with 1829, when 38 persons suffered death for those offences.
 ' But, not so of other crimes, for which CAPITAL PUNISHMENT *still*
 ' continues ; for they have increased.*

' The COMMITTEE invite the attention of the public to the
 ' melancholy fact of the frequent infliction of the punishment of

* See abstracts of Official Returns, given in the introductory remarks to
 this Volume, pp. ix. x.

‘ death in Great Britain, compared with other civilized countries. In France, by the penal code of 1832, its enactment is almost exclusively limited to the crimes of *treason, murder, and setting fire to a dwelling*; and, sparingly inflicted, even for these. In Prussia, during three years ending with 1834, but *six* persons underwent this punishment, while the number of those who suffered in England and Wales during the same period was 124, or, allowing for difference of population, nearly *twenty times as many as in Prussia!* Does not this superior tenderness for human life in an absolute State reflect shame upon constitutional England? In Holland and in Austria, as well as in the German States, sanguinary punishments are exceedingly rare; and in Belgium, the discontinuance of the capital penalty, during five successive years, has been accompanied by a *diminution in the number of murders.** Thus experience proves, that in order to render the laws against crime *reformatory*, they must cease to be *revengeful*.

‘ If the people of England would have a *more effective system of justice* for the protection of both property and life, let them petition Parliament for such a full and complete revision of their criminal code, as will be *consistent with Christian civilization and morals*, and will therefore—instead of enlisting the sympathies of the public on behalf of offenders—obtain for the law itself the respect and *voluntary co-operation of the people.*’

‘ W. B. SANSFIELD TAYLOR,

Hon. Sec.’

‘ 40, Trinity Square, Tower Hill,
London.’

* See *ante*, pp. v, vi, vii, ix, *et seq.*



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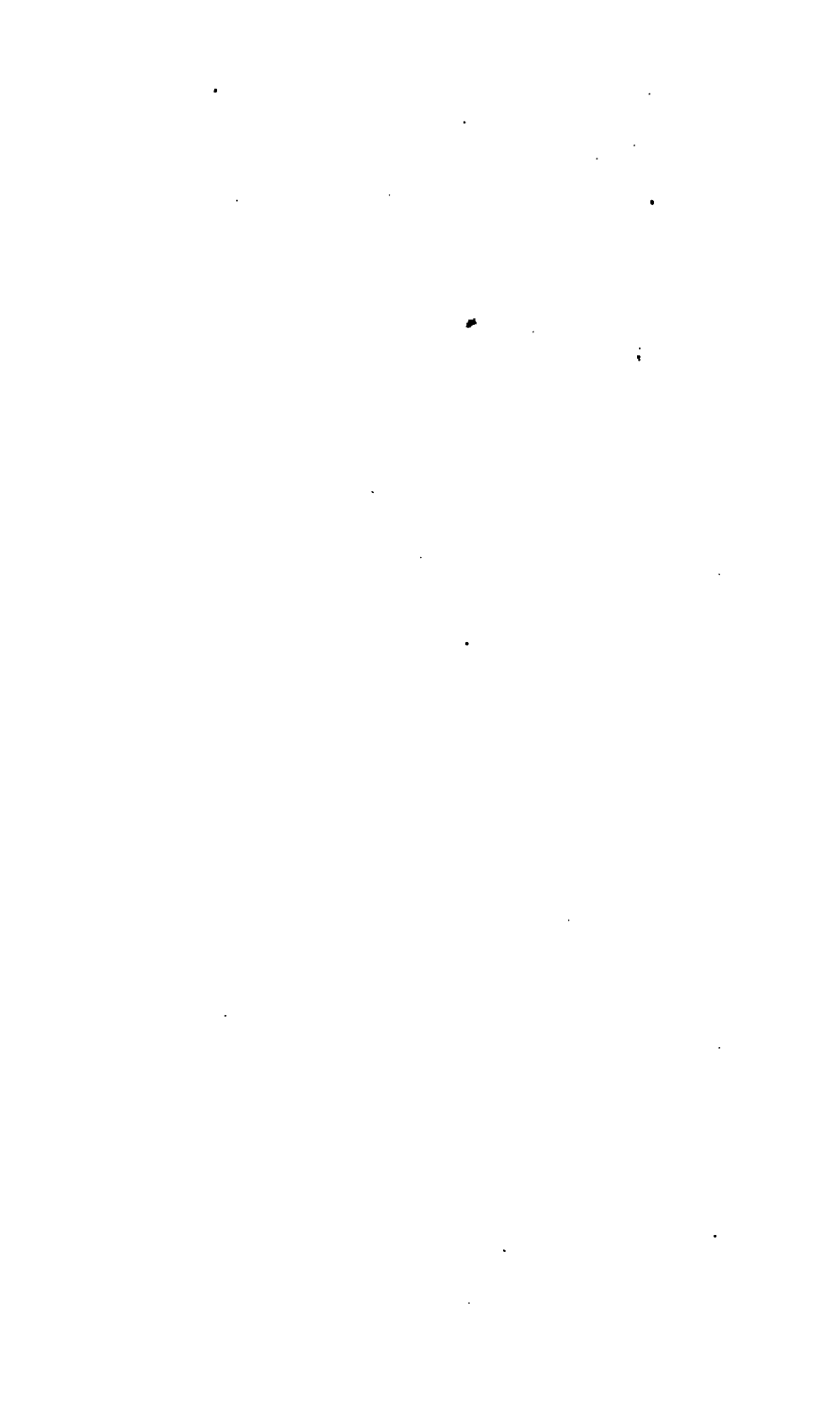
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